

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.820 OF 2021

SHITAL @ CHIVALI KUBER @ KUBRYA KALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Dilip Shind i/b. Mr.Sachin Bhavar, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th NOVEMBER 2021
PRONOUNCED ON : 18th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.656 of 2019 registered with Police Station Tembhurni, for offences punishable under Section 396, 397, 364, 201, 327 and 400 read with 34 of the Indian Penal Code (IPC) and under Section 66B of Information and Technology Act as also under

Section 3(1)(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act.

2 The case of the prosecution is that informant and one Ahmad Abdulla Shaikh (“deceased” for short) were friends. Since the wife of deceased had died, he was desirous of performing second marriage. Accordingly, informant searched a match for him on You tube application and sent information / bio-data of deceased on the said You tube website. On 4th December 2019 informant received a call from an unknown person in respect of said marriage proposal and that unknown person also said that there is one lady aged 32 years whose husband is dead and she is ready to accept marriage proposal. Even the deceased had a talk with the relatives of the lady.

3 According to the prosecution on 7th December 2019 informant and deceased, as asked by the people from the bride side, reached near Hotel Satyajit. From there they were escorted on two motorcycles by two persons. After travelling for about 15

kms. they stopped the motorcycles in a lonely place in a field of onion crop. The prosecution alleges that thereafter four unknown persons in age group of 25 to 35 came there armed with swords, knife in their hands and started assaulting the informant and the deceased with fists blows and from the handle side of weapons. They even snatched gold chain and gold ring from the person of deceased and removed mobile and cash amount of Rs.3,000/- from informant's pocket. Even they snatched handbag from deceased in which gold ornaments were there. It is further alleged that, at that point of time, two women also came and ran away after taking their bags. As the deceased had sustained injuries, he was rushed to Primary Health Center, Tembhorni where he was declared dead. First Information Report (FIR) accordingly came to be lodged.

4 Mr.Dilip Shinde, learned counsel for the applicant, submits that the applicant is neither a gang leader nor a member of any organized crime syndicate and therefore, prosecution of the applicant under the provisions of MCOC Act itself is not

maintainable in law. The pre-sanction and post sanction issued by the Sanctioning Authority against the present applicant is not proper and within the frame work of Section 23(1) and Section 23(2) of the MCOC Act. According to the learned counsel, cases shown to be pending against the gang leader Raju Sadrya Kale are of individual nature and the present applicant is not co-accused in any of those cases and therefore application of provisions of MCOC Act is unwarranted. The learned counsel then submits that the applicant is in jail since 18th December 2019. She has one breast feeding child and other four children and there is no one to take care of them. The applicant is ready to abide by all terms and conditions if so imposed by this Court.

5 The learned counsel placed reliance in **Mahipal Singh vs. Central Bureau of Investigation and Another¹**, **Dinesh Bhondulal Baisware vs. State of Maharashtra²** and **Prasad Shrikant Purohit vs. State of Maharashtra and Another³**.

1 (2014) 11 Supreme Court Cases 282

2 2016(4) Bom.C.R. (Cri) 149

3 (2015) 7 Supreme Court Cases 440

6 Mr.Dedhia, the learned APP, on the other hand, vehemently opposed the submissions and submitted that the present applicant is duly identified in the Test Identification Parade. During the course of investigation certain recovery has also been made. There is sufficient material on record to establish that the applicant is involved in serious offence and the provisions of MCOC Act are rightly attracted.

7 Perused the FIR and investigation papers. If the FIR is read carefully, then the only role attributed to the applicant and another woman accused is that during the course of incident they appeared from the field of jowari crop and ran away with the bags belonging to the informant and deceased. Except this, no other role is attributed on the part of the present applicant. The only question to be determined is whether the prosecution has been able to satisfy prima facie about the applicability of the provisions of MCOC Act qua the applicant.

8 In the case of **Mahipal Singh (supra)** it has been held by the Hon'ble Apex Court that in order to constitute an offence of organised crime, it has to be established that the accused is involved in “continuing unlawful activity” defined in Section 2(1)(d) of MCOC Act i.e. more than one charge-sheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before competent Court within preceding period of 10 years and the Court has taken cognizance of such cases. The Hon'ble Apex Court further held that for invocation of offence of organized crime, ingredients constituting that offence must exist on the date the crime is committed or detected. Similar observations can be noted from the judgments in **Dinesh Bhondulal Baisware (supra)** and **Prasad Shrikant Purohit (supra)**.

9 I have carefully gone through the sanction accorded by Additional Director General of Police (L & O), Mumbai on 5th June 2020. Although at Serial Nos.3 and 4 the name of the present applicant is mentioned, however, at Serial No.5 the Sanctioning Authority has observed that there are more than one

charge-sheets against the accused persons namely Raju @ Rajiv @ Gandhi Sadrya Kale, the leader of the alleged syndicate and Kuber @ Kubrya Sadrya Kale for an offence punishable with an imprisonment for a period of more than 3 years, before the competent Courts within the preceding period of 10 years and that the concerned Courts have taken cognizance of such offences. However, no such observation is appearing in respect of the present applicant. Even otherwise, learned APP has not been able to point out during the course of argument as to how the applicant is involved in the organized crime within the meaning of Section 2(e) of the MCOC Act. Merely because the applicant has been identified in the Test Identification Parade it does not mean that she is a part of organized crime syndicate and is actively involved in commission of organized crime. Thus, prima facie, the ingredients of Section 2(1)(d) of the MCOC Act are missing. This being so, by necessary implication, the prosecution has not been able to prima facie establish that the case of applicant falls within the scope of Section 21(4) of the MCOC Act.

10 For the aforesaid reasons, I am inclined to grant this application. Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) Applicant – Shital @ Chivali Kuber @ Kubrya Kale shall be released on bail in Crime No.656 of 2019 registered with Police Station Tembhurni, on her executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (iii) The applicant shall not tamper with prosecution evidence.
- (iv) The applicant shall regularly attend dates fixed by the Court in her case unless exempted in accordance with law.
- (v) The applicant shall co-operate with the Court for expeditious disposal of the case.

(vi) Bail before trial Court.

(vii) The application stands disposed off in aforesaid terms.

(V. G. BISHT, J.)