

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 408 OF 2020

Kali @ Pramod Baniram Nuner Applicant

Versus

The State of Maharashtra Respondent

Mr. Deepak Gautam Padohilal for Applicant.
Mr. Ajay Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 07th APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. I 472 of 2018 registered at Narpoli police station, Bhiwandi, Dist. Thane, under sections 387, 115, 120B and 511 of the Indian Penal Code (for short 'IPC'), under section 3 and 25 of Indian Arms Act and under section 37(1) 135 of Maharashtra Police Act. Subsequently, sections 3(1)(2), 3(2) and 3(4) of The Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act') are added. The applicant was arrested on

10/12/2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Deepak Padohilal, learned counsel for the applicant and Shri. Ajay Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') was lodged by A.P.I. Vishnu Avhad, attached to Narpoli police station. This F.I.R. was lodged on 10/12/2018. He has stated that, on 06/12/2018, C.R.No. I 468 of 2018 was registered with Narpoli police station under sections 307 and 504 of IPC. The informant was investigating into that offence. One Arjun who was injured in that case was taken to Kasheli pipe line by one Dulal Mandal and he was assaulted there. Even fire arms were used. The accused in that case Dulal was taken in custody. Fire arms and live cartridges were found in his possession. He, in turn, supplied information that the fire arm was given by one Jaysingh @ Bunty Thakur. He was also arrested. During their interrogation, the police came to know that Dulal Mandal and Jaysingh had formed a gang. The present applicant, Hiru Gangawasi, Rajesh Karotiya and Anju @ Manoj Singh were members of their gang. The object of that gang

was to target the businessmen in construction business. The investigation revealed that, the gang had shortlisted a few businessmen and had gathered information about their prospective victims. Based on this information, other accused including the present applicant were arrested.

4. Approval under section 23(1) of MCOC Act was accorded on 07/01/2019 and then the investigation was carried out under the provisions of MCOC Act. During investigation, recovery of some sharp weapons was effected at the instance of present applicant. After completion of investigation charge-sheet was filed and consent under section 23(2) of MCOC Act was accorded on 25/03/2019.

5. Learned counsel for the applicant submitted that, there are no antecedents against the present applicant. There is nothing to show that the applicant was in any way involved in any other offence with any other accused. He, therefore, submitted that, the applicant cannot be a part of the organized crime syndicate. He further submitted that the applicant is in custody since December, 2019. There is no basis to detain him any further. The offence

under MCOC Act is not made out against him. Learned counsel for the applicant relied on the orders passed by this court in Criminal Bail Application No. 3452 of 2019 and Criminal Bail Application No.3017 of 2019 whereby this court (Coram: Sandeep K. Shinde, J.) had granted bail to co-accused Raju @ Haidar @ Mohammed Shahid Mohammed Ibrahim Khan and Jaising @ Bunty Girwasing Thakur. He also relied on order passed by this court (Coram: Bharati Dangre, J.) in Criminal Bail Application No.3313 of 2019 dated 25/03/2021 granting bail to Hiru @ Hiranman Jagdish Gangwawni. Learned counsel for the applicant submitted that on the ground of parity also the applicant deserves to be released on bail.

6. Learned APP opposed this application and he relied on statements of witnesses who have seen the accused together and they were seen discussing about their plans to commit this offence.

7. I have considered these submissions. As rightly submitted by learned counsel for the applicant, there are no criminal antecedents against the applicant. The investigation papers contain list of offences committed by the accused and in

that list only offence mentioned against the present applicant is C.R.No.478 of 2018 registered with Narpoli police station which is the subject matter of the present application.

8. I have also perused the statements referred to by learned APP. These are the statements given by witnesses Rahul Nanda and Rajesh Patil. Their statements are recorded U/s.164 of Cr.p.c. Rahul has stated that, he was knowing Bunty since past 9 to 10 years. Other accused used to meet Bunty. This witness Rahul has seen all the accused having discussion with Bunty. It is his case that, he had heard Bunty, Dulal and others talking about committing offences by threatening builders. Bunty had even showed him a firearm. In that context, this witness had mentioned that, even the present applicant used to meet Bunty and others. The other witness Rajesh Patil has stated that he was knowing Dulal Mandal and Dulal had told him that other accused including the present applicant were planning to commit murder of one Sanjay Bhoir. In that context, applicant's name was told to this witness by Dulal.

9. Besides these two statements, there is circumstance of

recovery of 3 knives at the instance of present applicant from his room. Except above mentioned circumstances there is absolutely no material against the present applicant. There is nothing to show that the applicant had in any manner taken part in any other offence committed by any other accused. In the present case, there is no substantive offence which was the subject matter of the investigation. The F.I.R. was lodged by a police officer who was investigating a separate offence and during investigation they have arrested one accused after another by registering a separate offence vide C.R. No. I 472 of 2019 at Narpoli police station. In this case, there is no particular incident which could be termed as continuing unlawful activity as envisaged under section 2(1)(d) of MCOC Act. Secondly, there is nothing to show that the applicant had acted on behalf of any organized crime syndicate. Statements of these two witnesses referred to herein above are also innocuous and they do not show any concrete evidence against the present applicant showing his complicity. Other accused referred to herein above are granted bail by this court, therefore, on the ground of parity also, the present applicant deserves to be released on bail.

From the above discussion, it is clear that rigours of section 21(4) of MCOC Act are not attracted in this case. From the available record, it can safely be recorded that, there are reasonable grounds for believing that the applicant is not guilty of offence under MCOC Act. Since he does not have any past antecedents, therefore, there is also scope to believe that he is not likely to commit any offence while on bail. Therefore, bail can be granted to the applicant.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No. I 472 of 2018 registered at Narpoli police station, Bhiwandi, Dist. Thane, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)