

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

BAIL APPLICATION NO. 1084 OF 2021

Harshwardhan Shahu Ghorpade ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.A.P. Mundargi, Senior Counsel i/b. Mr.Omkar Nagawekar
for the Applicant.
Mrs. P.P.Shinde, APP for the Respondent -State.
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CORAM : V.G.BISHT, J.
RESERVED ON : 6TH NOVEMBER, 2021
PRONOUNCED ON : 16TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 482 of 2019 registered with Shivaji Nagar Police Station, District- Kolhapur for the offences punishable under Sections 364-A, 395, 386, 120B, 323 and 506 of the Indian Penal Code (the IPC) and Section 3 (1) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organized Crime Act (for short, the MCOCA Act”).

2. The prosecution case in short is that, on 12th September, 2019 at about 2.15 a.m., while informant and his accountant, namely, Sanjay Singi were returning after Ganpati visarjan and had stopped near old ST Stand to have a cup of tea, a white colour Honda Mobilio car bearing registration No. MH 09 DA 6849 came. Accused Vikas Khandelwal, who was known to Sanjay Singi, Harshwardhan Ghorpade (applicant), Maddy @ Mandar Ghorpade, Arun Koli and one unknown person alighted from the said car. One more unknown person came on a bike.

3. The prosecution alleges that accused Vikas Khandelwal then forcibly put the informant in his car and Sanjay Singi was also forcibly made to sit on a bike. Prosecution further alleges that all the above said accused including applicant then started beating informant by means of fists and kick blows and took Sanjay Singi to a field behind Alliance Hospital, Ichalkaranji. After reaching there, when the informant asked as to why they were being beaten, it is

further alleged, all the above persons asked the informant to pay them Rs. 5 lakhs immediately otherwise he would be killed. When both of the i.e. informant and Sanjay Singi expressed their inability, then accused Vikas Khandelwal asked informant to call his relatives with monies. Accordingly, Sanjay Singi rang up informant's cousin, namely, Niranjana Ramchandra Dawade and also messaged him.

4. Later on, said Niranjana Dawade, Abhijeet Lole, Kumar Jadhav, Manoj Taral and others came. Accused Vikas Khandelwal then asked accused Maddy @ Mandar to collect amount. Informant's brother Abhijeet then handed over Rs. 50,000/- to accused Maddy @ Mandar and pleaded that his brother be released and that he will pay the remaining amount within two days.

5. The prosecution further alleges that the above said accused then released informant and Sanjay Singi and while leaving removed a brass ring having a green stone and also a

gold ring from the finger of Sanjay Singi. They also threatened that if the complaint is lodged, they would face consequences. Informant accordingly lodged the First Information Report (FIR).

6. Mr. Mundargi, learned Senior Counsel for the applicant, submits that as far as the role of present applicant is concerned, the FIR is totally silent except that applicant along with others had allegedly beaten the informant by fists and kick blows. Main role is that of accused Vikas Khandelwal and of Maddy @ Mandar. Even when the statement of informant came to be recorded under Section 164 of the Code of Criminal Procedure (for short, "the Cr.P.C.") by concerned Judicial Magistrate First Class, the entire story was reversed by informant and the specific role was assigned to applicant. Similar are the statements of witnesses. According to learned Senior Counsel, there is no sufficient evidence on record to show any nexus of applicant with the gang and therefore, the application of provision of the MCOCA Act will not be attracted as against the applicant.

7. Mrs. Shinde, learned APP, on the other hand, opposed the submissions and invited my attention to the statements of witnesses. According to learned APP, there was recovery of cash amount and ring at the instance of applicant as well. Learned APP also referred to the affidavit of the investigating officer and pointed out the antecedents of applicant. According to learned APP, having regard to the nature of offence, the application does not deserve consideration.

8. Perused investigation papers. I have also gone through the FIR and the statements of prosecution witnesses relied by the either side.

9. From the FIR, it is seen that informant was made to sit in a car forcibly by accused Vikas Khandelwal and while he was being taken to the field behind Alliance Hospital, Ichalkaranji, he was allegedly beaten by all the said accused by means of fists and kick blows. Thus, the first accusation against applicant is that he had beaten informant by fists and kick blows.

10. It is then seen from the FIR that after taking informant and his accountant Sanjay Singi to the said field, all the accused demanded Rs. 5 lakhs from informant. It means the applicant had also participated in the demand of said monies. However, when informant expressed his inability, accused Vikas Khandelwal asked him to call his relatives with the amount otherwise they would kill him.

11. At this stage, it is relevant to note the statement of informant, which was recorded under Section 164 of the Cr.P.C. by concerned Judicial Magistrate First Class on 17th September, 2021. This statement was recorded after one week i.e. after recording of the FIR.

12. In the statement recorded under Section 164 of the Cr.P.C, informant stated that it was the applicant who after alighting from the car had called him and Sanjay Singi and then forcibly asked him to sit in the car and Sanjay Singi on a motor cycle. This is quite inconsistent with the contents of FIR wherein accused Vikas Khandelwal has been alleged to

have forcibly thrust informant in the car and Sanjay Singi on a motorcycle. Similarly, the statement then shows that after reaching in the field, it was accused Vikas Khandelwal who asked informant and Sanjay Singi to pay them Rs. 5 lakhs immediately otherwise they would kill him, whereas the FIR gives an impression that all the accused including applicant had demanded the sum of Rs. 5 lakhs.

13. Statement then lastly and for the first time shows that after getting Rs. 50,000/- and while leaving, accused Vikas Khandelwal removed a ring from the finger of Sanjay Singi while applicant removed a ring from the finger of informant. Thus, there are material improvement vis-a-vis FIR.

14. It is also interesting to note that the statement of Sanjay Singi and that of cousin of informant, namely, Nirranjan Dawade came to be recorded in the similar fashion as given by informant under Section 164 of the Cr.PC. Apparently, there is great inconsistencies in between the contents of FIR and statements of informant and other witnesses named earlier.

Almost different role is assigned to the applicant thereby making his role to be more serious than what is made out in the FIR.

15. I have also gone through the discovery statement made by applicant under Section 27 of the Evidence Act whereby cash amount of Rs. 6,450/- and a ring came to be seized at his instance. In view of the inconsistencies pointed out by me here-in-above, at this stage, much weightage can not be attached to the recovery panchnama.

16. The applicability of Section 21 (4) of the MCOCA Act will not be a bar in releasing the applicant on bail.

17. Having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Harshwardhan Shahu Ghorpade shall be released on bail in C.R. No. 482 of 2019 registered with Shivaji Nagar Police Station,

District- Kolhapur on his executing PR. Bond in the sum of Rs. 50,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

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(V.G.BISHT, J.)