

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

CRIMINAL BAIL APPLICATION NO. 920 OF 2020

Abhijeet Dilip Tekale

.... Applicant

Versus

The State of Maharashtra

.... Respondent

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Mr. Sachin Thombare a/w Rohan Hogle i/b Shiv Prasad Salunke,
for the applicant.

Smt. J.S. Lohokare, APP for the State/Respondent.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 12th MARCH, 2021**

PC. :

1. The applicant is seeking his release on bail in connection with C.R.No. 826 of 2019 registered at Wakad Police Station, Pune on 09/08/2019 under sections 395 and 397 of the Indian Penal Code. Subsequently, sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crimes Act (for short 'MCOC Act') were applied.

2. Heard Mr. Sachin Thombare, learned counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The prosecution story unfolds through the FIR lodged by the victim Karan Aaher on 9/8/2019. He has stated in his FIR that on 8/8/2019, in the evening at around 8.00 p.m., he had gone to Thergaon. He had received a telephonic call from the present applicant from an unknown number. Caller identified him as Abhijit Tekale. It was name of the present applicant. Caller asked him about his whereabouts. He told the informant that he wanted to meet him. The informant gave some excuses and did not agree to meet him. After some time, when he was coming towards Ravet Road, he had reached house of one Kantilal Gujar. At that time, the present applicant, Aniket Choudhary, Sumeet Pandit stopped him. Aniket Choudhary questioned him as to what he was telling people about Aniket. The informant denied saying anything. Aniket and others including the present applicant beat him with kicks and fist blows. He rescued himself and concealed himself at Thergaon. He did not feel it safe to go on his two wheeler. Therefore he went to his friend's house Kiran Bhilare to take his four wheeler. Kiran was not at home. Then he went to the house of other friend Prashant Thorat and waited for Kiran

Bhilare to come there. He was waiting with his other friends at Shivdarshani Colony. At around 10.30 p.m. accused came there on four to five two wheelers. He has named present applicant, Aniket Choudhary, Sumeet Pandit, Moij Shaikh, Bala Lokhande. They were accompanied by ten to twelve unknown persons. He has alleged in his FIR that Aniket Choudhary tried to give a blow. He warded it off but it landed on his left forearm. It has further alleged in the FIR that the present applicant assaulted the informant with an iron rod on his wrist and others assaulted with kicks and fists blows. Aniket Choudhary removed informant's mobile phone and cash amount of Rs. 5,000/- and then they went away. On this basis the FIR is lodged.

4. Learned Counsel for the applicant submitted that the first informant has given supplementary statements. His four other supplementary statements are recorded and in the supplementary statement dated 27/12/2019 when the informant was confronted with the CCTV footage, he had admitted that the applicant was not one of the actual assailants. In that statement

he has stated that the applicant had called him telephonically. He submitted that thus there is clear false implication of the applicant in the FIR. He submitted that there is only one previous case pending against the present applicant vide C.R. No. 51 of 2016 only under section 326 of the Indian Penal Code and interestingly in that FIR the present first informant Karan Aaher is the co-accused of the present applicant. The document to that effect is produced by learned Counsel for the applicant. The copy is taken on record and marked "X" for identification. He therefore submitted that the applicant had not worked for any gang and therefore provisions of MCOC Act are wrongly imposed against the present applicant.

5. Learned APP opposed this application. She submitted that the informant has consistently named him in the FIR and other supplementary statements. In the supplementary statement dated 27/12/2019, based on CCTV footage, the informant has stated that though the applicant had not actually assaulted him, he was present at the spot. She submitted that this is an offence

under MCOC Act. There are restrictions under section 21(4) of MCOC Act for granting bail. Approval under section 23(1)(a) of MCOC Act was granted on 19/09/2019. It was mentioned in that order that Aniket Choudhary was the gang leader of an organised crime system of which all other accused including the present applicant were members and they have committed this offence. The applicant was arrested on 13/08/2019 and since then he is in custody. After conclusion of investigation, sanction under section 23(2) of MCOC Act was also accorded on 04/02/2020.

Reasons

6. The informant's FIR was registered on 09/08/2019. Thereafter, his supplementary statements were recorded on 10/08/2019 and 21/12/2019. Till then his story as far as the present applicant is concerned, was consistent with the version given in the FIR. As far as the role of the present applicant is concerned, in the supplementary statement dated 10/08/2019, he has not stated that the applicant had assaulted him with an iron rod. Instead he has stated that one friend of Aniket Choudhary had assaulted him with an iron rod. So, at the first instance, he

has changed his version as far as the role attributed to the present applicant is concerned. On the second occasion when his supplementary statement was recorded on 22/12/2019 again he stated that the present applicant had assaulted with an iron pipe on his wrist. After that one more supplementary statement of the informant was recorded on 27/12/2019. At that time, he was shown CCTV footage and he was confronted with his version in the FIR. At that time he had admitted that he had thought that the applicant had assaulted with an iron rod but that did not appear to be correct from CCTV footage. The informant has stated that one Natha Shinde had assaulted him with iron rod. The informant has stated that the applicant was seen at some distance from the spot of the incident sometime before the incident and that he was seen calling somebody and then he had left the spot.

7. Thus the informant's subsequent version as far as the present applicant is concerned, is not only contrary with his own version in the FIR, but it is also quite vague. At the first point of time, the informant's case was that the applicant had actually

assaulted him but subsequently he improved his case and implicated him by alleging that the applicant had made phone call before the incident near the spot indicating that the applicant had called others at the spot. Thus sufficient doubt is created about applicant's role and his involvement in the offence.

8. The injury certificate of the injured shows that the informant had suffered one CLW coupled with abrasion on left Arm and another contusion on left forearm. These are absolutely minor injuries.

9. As rightly submitted by learned Counsel for the applicant, in the past, there is only one offence registered against the present applicant. Significantly in that FIR, the present first informant was one of the co-accused of the present applicant. Therefore that offence cannot be used against the present applicant to contend that the applicant was acting in continuation of an illegal activity of the organised crime syndicate of which Aniket Choudhary was the gang leader. That earlier offence had

no connection with the alleged organised crime syndicate of Aniket Choudhary. The applicant was not involved in any other offence alongwith gang leader Aniket Choudhary. Therefore in the facts of this case, there is hardly any material to show that the applicant had acted as a member of an organised crime syndicate or committed the crimes for the benefit of organised crime syndicate. Therefore, at this stage, there is scope to believe that the applicant has not committed any offence punishable under MCOC Act. There is only one antecedent against him, that too was recorded in the year 2016. Therefore, at this stage, there is scope to believe that the applicant is not likely to commit any such offence . In this view of the matter, bar under section 21(4) of MCOC Act will not operate against the present applicant and he can be released on bail.

10. Hence the following order.

ORDER

- (i) In connection with C.R. No. 826 of 2019 registered with Wakad Police Station, Pune, 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) The applicant shall attend the concerned Police Station once in a month for a period of two years from today.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)