

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

CRIMINAL BAIL APPLICATION NO. 940 OF 2020

Sonya Shaikh @ Jalaluddin Nijamuddin
Shaikh

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Ms. Shubhangi Parulekar for Applicant.

Mr. H. J. Dedhia, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th FEBRUARY, 2021

P.C. :

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

2. Heard Ms. Shubhangi Parulekar, learned counsel for the applicant and Shri. Dedhia, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Karan Aaher. He has stated that, on 08/08/2019 he had gone to Thergaon. He received a phone call from one Abhijit Tekale. He ignored him. When he was travelling on his two wheeler towards Ravet road, accused Abhijit Tekale, Aniket Chaudhary and Sumit Pandit stopped him. They started beating him. He rescued himself and took shelter behind a bus stop. The informant was apprehensive of going home alone, therefore, he went to the house of his friend Kiran Bhilare. He was not at home. Therefore, he went to the house of his another friend Prashant Thorat. Kiran Bhilare was to meet him there. Therefore, he waited at Shivdarshan colony, Thergaon. At about 10.30p.m. 4 to 5 two wheelers came there. 10 to 12 assailants viz. Aniket Chaudhary, Sumit Pandit, Abhijit Tekale, Juber, Bala Lokhande, besides 10 to 12 other companions reached there. All of them started assaulting him. Aniket tried to give a blow with sickle. The informant avoided that blow. It landed on his left arm causing injury. Abhijit caused injury with an iron rod. Others assaulted him with kicks and fist blows. Accused Aniket removed a mobile phone and Rs.5000/-

from him. On this basis, the F.I.R. was lodged. Accused were arrested. Applicant was arrested on 15/10/2019 and since then he is in custody. Provisions of MCOC Act were invoked on 19/09/2019 and after completion of investigation, sanction under section 23(2) of MCOC Act was accorded on 04/02/2020.

4. Learned counsel for the applicant submitted that there is no evidence against the present applicant. The informant, for the first time, in his second supplementary statement which was recorded belatedly, has taken the name of applicant. The F.I.R. was lodged on 09/08/2019. Thereafter another statement was given on 10/08/2019 and on the third occasion in the month of December, supplementary statement dated 21/12/2019 was recorded and for the first time, the informant had named the applicant. She submitted that there is no other circumstance against the applicant. There are eye witnesses but they have also not named him. She submitted that there is no recovery of incriminating article at his instance. She further submitted that the injuries suffered by the informant are absolutely minor. One was CLW 1cm. x .05cm. on his arm and the other was contusion over

left forearm. These minor injuries are not consistent with the story of the informant.

5. Learned APP opposed this application on the basis of the supplementary statement of the informant, wherein, he has named the applicant, as well as, confession of one Tajuddin Shaikh wherein again applicant's name was mentioned. He, therefore, submitted that considering the serious offence under MCOC Act bail should not be granted to the applicant.

6. I have considered these submissions. As rightly submitted by the learned counsel for the applicant, in the F.I.R. and in the first supplementary statement recorded on 10/08/2019 the informant has not named the present applicant, though, he has given specific names of other accused. For the first time, on 21/12/2019 the informant has given name of the present applicant. The said supplementary statement does make a reference to the applicant's presence at the spot. There are allegations that, he had held the informant and one Tajuddin had assaulted him with a belt. After that, another supplementary statement was recorded on 27/12/2019 and herein again there is

improvement on his part and he has stated that the applicant had assaulted him with a stick. Thus, the informant has improved his version from time to time and by other subsequent supplementary statement recorded after 21st December, 2019, he has attributed different roles to the applicant. The applicant was arrested on 15/10/2019 and he is implicated by the informant after that on 21/12/2019. Therefore, his evidence as far as applicant is concerned is not consistent and, therefore, it is not reliable.

7. The other eye witnesses namely Prajwal and Ajinkya have described the incident, but they have also not named the present applicant. They were not made to identify the applicant in the test identification parade. Therefore, their evidence does not help the prosecution case. The injuries suffered by the first informant are absolutely minor and the manner of assault which is described is not in consonance of the injury certificate. It is clear that the informant has given exaggerated version and has deliberately ascribed roles to many accused. There are other eye witnesses namely Pravin Karde and Akshay Kastar. Even they have not named the present applicant, though, they have named other

accused. The confession of co-accused Tajuddin recorded under MCOC Act is exculpatory and even in that statement no specific role is attributed to the present applicant. His statement merely shows their presence at the scene of offence. Therefore, even that circumstance is not incriminating against the present applicant. There is a reference to CCTV footage of the incident but, even there no role is attributed to the present applicant. The investigation papers show that there is only one other offence pending against the present applicant and in that offence he was a sole accused. There are no allegations that, he was involved in any other offence with any of the accused. There is nothing to show that the applicant had committed any offence in the nature of continuing unlawful activity of organized crime syndicate. Therefore, there is reason to believe that, he has not committed any offence under the provisions of MCOC Act. Considering only one antecedent against the applicant, there is scope to believe that he is not likely to commit such offences while on bail. Considering very weak evidence against the applicant, he deserves to be released on bail.

8. 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)