

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

CRIMINAL BAIL APPLICATION NO. 1200 OF 2019

Vicky Gendalal Karjale	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr. Aniket Nikam i/b. Mr. Vivek N. Arote, for the Applicant.
Mr. R. M. Pethe, for the Respondent / State.

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**CORAM : C.V. BHADANG, J.
DATE : 6 DECEMBER 2021**

P.C.

1. This is an Application for bail. The Applicant is Accused No.3. The Applicant alongwith four others, has been chargesheeted for the offence punishable under Section 143, 144, 147, 148, 149, 307 and 323 of IPC, Section 4 r/w. Section 25 of the Arms Act and Section 37(1) r/w. Section 135 of the Maharashtra Police Act and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act', for short).

2. The prosecution case is that the Applicant and the co-accused are members of an organised crime syndicate of which the Accused No.1 Mahesh Bhagat is the leader. According to the prosecution

there is an intense rivalry between the members of the syndicate over supremacy in the crime syndicate. The incident in question is alleged to have happened on 12 October 2017 at about 11.00 p.m. near Warje Bridge at Pune, in which the Complainant Vishal Shirsat alongwith injured / victim Raju Anpur were assaulted by the Applicant and the co-accused by a sharp weapon. The Applicant is alleged to have assaulted the victim and the Complainant by a sickle like weapon while the Accused No.1 Mahesh Bhagat, is alleged to have assaulted the victim by a bottle of beer. The Complainant and the victim were also assaulted by kicks and fist blows.

3. On the basis of the complaint lodged by Vishal Shirsat, an offence at Crime No.381/2017 was registered with Police Station Warje Malwadi. It appears that a proposal for grant of sanction was sent to the Competent Authority and the Competent Authority by an order dated 4 April 2018 has granted sanction under Section 23(2) of the MCOC Act. In so far as the present Applicant is concerned, he was arrested on 14 February 2018. Accused No.5 Aditya Marane is stated to be absconding.

4. The learned Special Judge has rejected the Application for bail of the Applicant. It is a matter of record that co-accused Mahesh Bhagat and Shubham Hanamghar were released on bail by the learned Sessions Judge, prior to the invocation of the MCOC Act. It

is further a matter of record that the prosecution has filed an Application for cancellation of bail granted to the co-accused which Applications are pending before the learned Sessions Judge.

5. I have heard Mr. Nikam, the learned counsel for the Applicant and the learned APP for the Respondent / State. Perused record.

6. It is submitted by the learned counsel for the Applicant that the prosecution evidence does not *prima facie* indicate the involvement of the Applicant in the offence under Section 307 of the IPC. The learned counsel pointed out that as per the statement of the victim Raju Anpur, the assailants were looking for Vicky Anpur who is the brother of Raju Anpur. He submitted that even going by the statement of Raju Anpur, the present Applicant asked him as to where his brother Vicky Anpur is. The learned counsel therefore submitted that the Applicant had no intention to assault the victim or the Complainant. The learned counsel has thereafter referred to the medical certificate in order to submit that none of the injuries sustained are attributable to a sharp weapon such as a sickle, and in any event, injuries are not shown to be on vital part and cannot be said to be life threatening. He therefore submitted that *prima facie* there is no case of offence under Section 307 of IPC made out.

7. In so far as the invocation of the provisions of the MCOC Act are concerned, it is submitted that the confessional statement of the Applicant recorded by the ACP does not bear the certificate as required by Rule 3(6) of the Maharashtra Control of Organised Crime Rules, 1999 (1999 Rules) and therefore the said statement cannot be taken into consideration or used against the Applicant. Reliance for this purpose is placed on the order passed by this Court in *Mukesh Kantilal Chavan Vs. The State of Maharashtra*¹. It is submitted that the previous offences which are registered against the Applicant are not of a similar nature and there is no commonality between the offences registered and therefore, *prima facie*, the embargo placed on the grant of bail by the provisions of MCOC Act, cannot be invited. For this purpose, reliance is placed on the order passed by this Court in *Bhupendra @ Golu s/o. Suryakant Borkar Vs. State of Maharashtra, (through P.S.O. Ajni, Nagpur)*². Lastly, reliance is placed on the decision of the Supreme Court in *Ashim @ Asim Kumar Haranath Bhattacharya Vs. National Investigating Agency*³, in order to submit that the Accused cannot be indefinitely detained for long particularly when, there is no possibility of the trial being concluded in near future.

8. Learned APP has submitted that there is a *prima facie* case made out against the Applicant as there is direct evidence of the

¹ in Criminal Bail Application No.2816/2019 decided on 5 April 2021

² in Criminal Application (BA) No.608/2016 decided on 19 August 2016 Nagpur Bench.

³ in 2021 SCC ONLINE SC 1156.

Complainant and the victim, both of whom are injured eye witnesses about assault by the Applicant with a sharp weapon. It is submitted that the injuries are serious and life threatening and there are circumstances to infer that there was an intention to commit murder of the victim. It is submitted that the reliance placed on the various judgments is misplaced as they are distinguishable on facts.

9. I have carefully considered the rival circumstances and the submissions made. *Prima facie*, it appears that the Complainant Vishal Shirsat and the victim Raju Anpur both of whom are injured in the incident have stated about an assault by sharp weapon like a sickle on the head and other parts of the victim Raju Anpur. In the said incident, the Complainant was also assaulted and had sustained injuries.

10. The medical report of the victim Raju Anpur shows various injuries as under -

-CLW over frontal bone region of 5x1 cm with fracture of outer table of bone

-CLW over posterior aspect of right ear extending up to pinna of 3x1 cm

-CLW over right cheek 2x1 cm

-CLW over right shoulder posterior aspect – 2 CLW of 3x1 cm

- CLW over right medial wrist 1x1 cm
- CLW over right Lower Limb 2x1 cm
- CLW over right parietal bone over 3x1 cm
- Bilateral anterior wall frontal sinus fracture,
- right facial nerve canal fracture in vertical segment extending upto right temporal bone.
- Right shoulder acromion fracture and lateral end of clavicle fracture
- Had bleeding from nose and rt ear +
- CLW suturing was done under LA

11. *Prima facie*, the contention that the Contused Lacerated Wound (CLW) cannot be caused by sharp weapon, cannot be accepted in this case in view of the following opinion of the Medical Officer, Dr. Shridhar Kanetkar.

“Such injuries are commonly caused by sharp weapons but can also be caused by blunt object, especially if hit against a bone.”

12. At least, *prima facie*, the injuries are shown to be sustained on the frontal bone and the posterior aspect of right ear. There is a recovery of the clothes and the weapon at the instance of the present Applicant as shown in the Memorandum Panchanama dated 13 October 2017 under Section 27 of the Evidence Act. Thus, in my

considered view, apart from the invocation of the MCOC Act, there is *prima facie* case about involvement of the Applicant in the offence under Section 307 of IPC and offence of rioting etc.

13. Coming to the submissions based on the MCOC Act, it is true that the copy of confessional statement produced during the course of hearing, does not bear the certificate as required by Rule 3(6) of the 1999 Rules. However, reliance placed on the decision on the order passed by this Court in *Mukesh Kantilal Chavan (supra)* to my mind is misplaced for the reason that in that case the only material collected against the Applicant was in the form of the confessional statement of co-accused Ashok Bansode and Mohsin Ayub Pathan. In so far as accused Mohsin Ayub Pathan, he had retracted the statement before the Chief Judicial Magistrate Pune and in respect of the statement of Ashok Bansode, this Court found that the certificate as required by Rule 3(6) of the 1999 Rules was not appended.

This Court in para 10 of the order has observed that “even that aspect is a matter of trial, no advantage can be drawn at this stage”. However, this Court considering the fact that the only evidence was in the form of confessional statement by co-accused, unlike in the present, case directed release of the Applicant Mukesh Chavan on bail.

14. In *Bhupendra Borkar (supra)*, this Court on facts found that there was no *prima facie* case as the entry taken in the wireless register had disclosed that the shots were fired in the air and not at the Complainant. This Court found the evidence of the prosecution to be “*prima facie disappointing*”. It is true that under the provisions of MCOC Act, the antecedents / offences have to be of similar nature and bearing some commonality so as to lead to an inference and possibility of the Applicant indulging into a similar offence, if released on bail as held by the Supreme Court in the case of *Ranjitsingh Brahmajeetsing Sharma Vs. State of Maharashtra*¹.

15. In the case of *Bhupendra Borkar*, this Court has found that out of the five previous offences, none of the offence was under Section 307 and except one offence which was under Section 364 of IPC, other offences were of a minor nature.

16. Coming to the present case, the reply filed by the prosecution shows that there are following offences registered against the Applicant, apart from the present offence.

Sr. No.	Police Station	C.R.NO.	Sections
1	Sinhgad Road Police Station Pune	131/2014	392, 34 IPC u/secs. 4, 25 Arms Act

1 (2005) 5 SCC 294

2	Bharati Vidyapith Police Station Pune	3083/2015	7, 3(25) Arms Act
3	Warje Malwadi Police Station Pune	223/2015	143, 147, 148, 323, 504, 427 IPC
4	Warje Malwadi Police Station Pune	78/2016	143, 147, 148, 149, 336, 504, 427 IPC
5	Warje Malwadi Police Station Pune	109/2016	143, 144, 145, 147, 427 IPC

Prime facie, it can be seen that at least three offences are of a similar nature, that is of rioting, which is also an offence in this case.

17. In *Asim Bhattacharya*, the Applicant / Accused was facing prosecution under the provisions of IPC, Arms Act, Explosive Substances Act and the Unlawful Activities (Prevention) Act, 1967. There were in all fourteen accused. The Applicant was arrested in the year 2012. The Supreme Court found that the chargesheet was filed on 12 April 2012 and the charge was framed only on 20 June 2019. The prosecution had cited 298 witnesses out of which it was stated that the prosecution proposes to examine 100 to 105 witnesses. The Supreme Court also found that the trial was at the stage of examination of P.W.1 who was under cross examination for a considerable period of time. The Supreme Court also found that there was only one Special Court which was holding trial once in every month. These were the circumstances in which the Hon'ble Supreme Court found that the Applicant was entitled to be released

on bail. In my considered view, the facts in the present case are distinguishable. Considering the fact that there is a *prima facie* evidence in the form of statement of injured witnesses and the Complainant and the recovery of clothes and the weapon at the instance of the Applicant and the antecedents, discretion cannot be exercised in favour of the Applicant. The Application is accordingly dismissed.

The observations herein are of a *prima facie* nature and for the limited purpose of deciding the Application for bail. The learned trial Court shall not be influenced by the same at the trial.

C.V. BHADANG, J.