

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.2613 OF 2019**

Mohiuddin Sayyed Shaikh  
@ Mani

..

Applicant

Vs.

The State of Maharashtra

..

Respondent

...

Mr. Mateen Abdul Rahim Shaikh with Mr. Jammu Shaikh, Mr. Shrinivas Kshirsagar and Mr. Arshad Shaikh for the Applicant.

Ms. Veera Shinde, A.P.P. for the State.

Ms. Renuka V. Bagde, ACP of Virar Police Station is present.

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**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 25<sup>TH</sup> MARCH, 2021.**

**P.C:-**

1. C.R. No.574 of 2016 came to be registered at Virar Police Station invoking Section 115 read with Sections 302, 120-B of the Indian Penal Code (“**IPC**”), Sections 4 and 25 of the Arms Act and Section 37(1) of the Bombay Police Act. It is in this

C.R. at a later point of time, on obtaining the necessary approval, the provisions of the Maharashtra Control of Organized Crime Act, 1999 (“MCOCA”) have been invoked qua four accused persons. The Applicant is original accused No.2.

2. With the assistance of learned counsel for the Applicant and learned A.P.P., I have perused the entire charge-sheet placed on record. Learned counsel for the Applicant has placed heavy reliance on an order passed by this court in the case of co-accused Girish Kumaran Nayar, who is alleged to be the gang leader and by order dated 17/02/2021, he has been released on bail on examining the contents of the charge-sheet and on consideration of the material alleging his involvement in the said C.R. and on the further ground that he is incarcerated since October, 2016 and the trial is not likely to commence and conclude in a reasonable period of time.

3. Learned A.P.P. does not dispute the said position and she states that the court has scanned the entire material in the charge-sheet and has *prima facie* observed that the ingredients of the offence under the MCOCA are not made out. The absence of the prosecution establishing a *prima facie* nexus between the past crimes at the discredit of the Applicant and the present crime, which has not been shown by the prosecution nor the material on record indicates such a nexus is the ground on which the bail is granted.

4. As far as the present Applicant is concerned, learned A.P.P. rely upon an affidavit placed on record by the Sub-Divisional Police Officer, Virar, Dist. Palghar, wherein a specific averment is made that the present Applicant is an active member of the gang and he has to his record a criminal case registered at Manikpur Police Station, Dist. Palghar being C.R. No.I-282 of 2016, thereby invoking Sections 454, 457, 380 read with Section 34 of the IPC. Learned counsel for the Applicant further makes a statement that the said fact is not in dispute, but in the said case, the court has not taken cognizance of the offence and the other offence which has been referred to in the chart mentioned in paragraph 8 of the said affidavit is the present offence. According to learned A.P.P., this is the distinguishing factor, which distinguishes the case of the present Applicant from that of the gang leader Girish Nayr.

5. Perusal of the FIR, which resulted into the registration of an offence in Virar Police Station on 16/10/2016, makes a reference to suspicious circumstance when a secret information was received that about four people standing at a particular location in an Innova car and that they were armed with dangerous weapons and were planning to kill one Gabari. Tipped of on the secret information, the police party reached the spot in civil dress and the persons were identified as the accused

persons and they overheard discussing their plan to kill Gabri @ Arun Hira Patil. On noticing the presence of the police, they flew away from the spot leaving the Innova Car at the spot. When the police peeped inside the car, it contained a bag full of arms and when the owner of the said car was traced and, with the assistance of the spare keys of the car, it was unlocked, several weapons like iron rods, knife, gupti, etc. were recovered from the said car and this led to invocation of Section 115, 302 read with Section 120-B and 34 of the IPC and relevant provisions of the Arms Act.

6. During the course of the investigation of this C.R., the existence of an organized crime syndicate under the leadership of Girish Nayar was noticed. A proposal was forwarded for invoking the provisions of the MCOCA and on the approval being granted, the relevant provisions were added and the Applicant was charge-sheeted on the basis of the said material.

7. While dealing with the Application of Girish Nayar, a coordinate bench of this court (Justice S.K. Shinde) has exhaustively dealt with the aspect whether in absence of the charge-sheet being filed against the Applicant, the provisions of the MCOCA can be invoked on the basis that an organized crime syndicate exists and is behind C.R. No.574 of 2016 registered with Virar Police Station. In paragraphs 10, 11 and 12 of the

said order dated 17/02/2021, the following observations are made:

*“10. Perusal of the allegations in the subject crime do not point out though this crime (Crime No.574 of 2016) committed by the applicant in capacity as members of organised crime syndicate either as its leader or on behalf of such crime syndicate.*

*11. Be that as it may, indisputably fourteen crimes/offences have been registered against the applicant for different offences punishable under Indian Penal Code, 1860. However, out of these offences, in respect of five offences, investigation is in progress; whereas in seven offences/crimes, charge-sheets have been filed and in one crime, applicant was convicted under Section 302 of the Indian Penal Code, 1860 but acquitted in appeal by this Court. However, in absence of better particulars of these fourteen offences, like, which charge-sheets, were considered before invoking provisions of MCOCA, I have perused the present charge-sheet wherein gist of offences is summarised.*

12. *Be that as it may, in the back-drop, I assume, there are fourteen previous offences registered against the applicant. Now let me see whether, previous offences registered against the applicant, were committed by him singly or jointly as a member of crime syndicate or on behalf of crime syndicate, so as to constitute, “continuing unlawful activity”; AND whether prosecution has shown, prima-facie, some nexus between the past crimes at his discredit and present crime.”*

After referring to the decision of the Apex Court in **State of Maharashtra v. Bharat Shantilal Shah & Ors.**<sup>1</sup> and the observations therein, it is recorded that the reply filed by the prosecution does not show that previously registered offence has nothing in common with the present offence. After enlisting the ingredients of unlawful activities as understood for the purposes of MCOCA, the following observations are made:

14. *Be that as it may, affidavit filed by the Investigating Officer in paragraph 15, reproduced list of registered offences against the applicant, who is stated to be a gang leader. Paragraph 16*

1 (2008) 13 SCC 5

simply, states that the offences committed by the accused/applicant are serious in nature and fourteen offences registered against him and in one of the offences, he has been convicted for life. Therefore, this affidavit is of no assistance to the prosecution to contend that the provisions of the MCOC Act have been correctly applied. Going further, in paragraph 16 of the affidavit, it is stated that the applicant has been convicted for life, however, it may be noted that applicant has been acquitted by this Court in the year 2014 in an appeal preferred against life imprisonment. Thus, to be noted that even the Investigating Officer has not verified correct facts before filing affidavit.”

8. I see no reason why the reasons adopted while releasing Girish Kumaran Nayar, the gang leader, on bail, do not apply in case of the present Applicant particularly, he is only alleged to be a member of the organized crime syndicate and the gang leader himself is held entitled for freedom by releasing him on bail on two grounds being the complicity of the accused and that the investigation is complete and the second being the trial is likely to take too long. This very reason prompts me to pass the following order:

**:ORDER:**

- (a) The Applicant – Mohiuddin Sayyed Shaikh & Mani shall be released on bail in C.R. No.574 of 2016 registered with Virar Police Station on executing P.R. bond in the sum of Rs.50,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicants shall attend the concerned police station twice a month i.e. on 1<sup>st</sup> and 3<sup>rd</sup> Monday of every month commencing from March, 2021 between 11.00 a.m. to 12 noon till charge is framed.
- (d) The Applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail.

9. The Application is allowed in the aforestated terms.
10. It is made clear that observations made hereinabove be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in its proceedings.

**SMT. BHARATI DANGRE, J.**