

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

BAIL APPLICATION NO. 2733 OF 2019

Mohammed @ Mammu @ Sanga
Sayyed Mohammed Jakir Sayyad ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Acharya M. Moorthy, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th AUGUST, 2021.

PER COURT:

1. This is an application for bail under Section 439 of Cr.PC. in connection with C.R. No. I-21 of 2016 registered with Manpada Police Station, Dist. Thane. The applicant was arrested on 19th February, 2018.

2. The case of the prosecution as reflected in the First Information Report (for short 'FIR') is that on 13th January, 2016, the complainant was returning home. Two unknown persons came on motorcycle. They were followed by two other unknown persons on the second motorcycle. One of the pillion rider snatched

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mangalsutra of the complainant. The complainant shouted for help. The persons, who had gathered at the scene of offence chased the accused. Two persons riding motorcycle fell down. One of them was apprehended and the second person threatened the members of the public with the knife. Two other accused were riding the motorcycle returned to the spot and they managed to give lift to accused who was threatening public. Thus, three of them managed to flee from the place of incident. The accused, who was apprehended at the spot gave his name as Haidarali Sarfaraj Kayam. He also gave names of other accused as Hashmi Dara Jabari @ Hashim Jafar (Dara) Hussain Sayyad @ Irani, Gazi Dara Jafari and Mohammed @ Mamu @ Sanga Jakir Farjand Sayyed. The offence was registered under Section 394 r/w Section 34 of IPC. Subsequently, approval was obtained for invoking the provisions of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") and on completing investigation, sanction was granted for offences under Section 3(1)(ii), 3(2), 3(4) of MCOC Act. On completing investigating, charge-sheet was filed.

3. The applicant had preferred an application for bail before the Court of Sessions. The said application was rejected vide order dated 29th November, 2018.

4. Learned Advocate for the applicant submitted that the applicant is in custody for a period of about three and half years. The provisions of MCOC Act cannot be applied against him. There is no cogent evidence to establish his complicity in the present crime. He has not been identified by any witnesses. There is no incriminating recovery from the applicant. The gang leader Mohammad @ Aandu Afsar Sayyed has been granted bail by the Special Court under the MCOC Act vide order dated 5th January, 2018. Since there is no evidence against the gang leader he has been granted bail. The question of continuing the applicant in custody does not arise. For lack evidence about involvement of the applicant in the present case, the provisions of MCOC Act cannot be invoked against the applicant alleging that he is member of crimes syndicate. The accused Aziz Hafiz Irani @ Sayed, Kantilal Anandji Shah and Kasim Afsar Sayyad Jaffery were granted bail. The applicant was implicated only on the basis of the statement and the confession of the co-accused.

5. The prosecution has filed affidavit in reply opposing the application for bail. Learned APP submitted that the applicant is the member of the crime syndicate. Several offences are registered against him. The gang is involved in committing serious offences.

There are several cases registered against gang leader. Prima facie material is available to fulfill requirement of the provisions of MCOC Act. There is evidence to show that the applicant is member of gang headed by Mohammad @ Aandu Afsar Sayyed.

6. The case of the prosecution relates to the incident of snatching mangalsutra of complainant by the accused. The case proceeds on the basis that the co-accused apprehended on the spot had disclosed the name of the applicant. The supplementary statement of the complainant was recorded on 13th January, 2016, 23rd January, 2016 & 18th March, 2016. The complainant has improvised her version by alleging that she was wearing another ornament which also snatched by the accused. Statements of the witnesses were recorded. Witness Sudesh Chavan in his statement dated 13th January, 2016 has stated that one person was apprehended on the spot. In the identification parade he has identified some of the accused. The statement was recorded pursuant to the Test Identification Parade which did not disclose name of person to whom he has identified. Statement of Santosh Lokhande was recorded wherein he stated that the apprehended accused gave the name of applicant. There was no test identification parade qua applicant. Thus, primarily, the

prosecution case proceeds on the basis of the statement of the co-accused. The fact that there are several cases registered against the applicant. However, it is pertinent to note that the provisions of the MCOC Act were invoked against the applicant and co-accused, on the the ground that they are members of gang headed by Mohammad @ Aandu Afsar Sayyed. The gang leader has been granted bail by the Special Court under the provisions of MCOC Act. While granting bail to him it has been observed that nothing was seized from him. He was not present at the spot. He was not riding motorcycle at the relevant time. He has not been identified. There are several cases registered against him. The said cases are pending merely because the offence are pending against said accused with different Police Stations. It is difficult to hold that he had committed the present crime. There is no material on record to show that he was present or he was supervising the crime. Hence, there is no obstacle to release him on bail. The provisions of MCOC Act are invoked on the basis of the fact that as member of crime syndicate headed by the aforesaid accused. The applicant is involved in the present case. As stated above, there is no cogent evidence to show his complicity in the crime. The gang leader has been granted bail for lack of evidence. The other accused namely Aziz Hafiz Irani @ Sayed, Kantilal Anandji Shah and Kasim Afsar

Sayyad Jaffery were also granted bail by the trial Court. The prosecution is relying upon the confession of the co-accused Gazi Dara Jafari. However, it is pertinent to note that there is no cogent evidence to establish the involvement of the applicant in the present crime.

7. Considering the nature of evidence and the facts of this case, there would no be impediment of granting bail to the applicant, in spite of restrictions under Sections 21(4) of MCOC Act.

8. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No.2733 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. I-21 of 2016 registered with Manpada Police Station, Dist. Thane which is subject matter of M.C.O.C. Special Case No.5 of 2016 on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Manpada Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

- (iv) The applicant shall not tamper with the evidence.
- (v) The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court.
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)