

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

**BAIL APPLICATION NO.3204 OF 2019**

Aniket Pandurang Navgire .. Applicant

***Versus***

State of Maharashtra .. Respondent

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Mr.Sachin H. Deokar, Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent - State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : JULY 28 , 2021.**

**P.C. :**

This is an application for bail under Section 439 of Cr.P.C. The applicant is arrested on 17<sup>th</sup> December, 2018, in connection with C.R.No.424 of 2018, registered with Khadak Police Station, Pune, for the offences punishable under Sections 307, 143, 147, 148, 149, 341, 323, 504 and 506 of Indian Penal Code ("IPC", for short), under Section 4(25) of Arms Act and under Section 37(1) read with 135 of the Maharashtra Police Act and Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act", for shrot).

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2           In the First Information Report (“FIR”, in short), dated 29<sup>th</sup> November, 2018, the informant has alleged that he knows Kunal Jadhav, Vipul Ingawale and Shrinath alias Tikya Shelar, who are residents of Shukrawar Peth, Pune. The sister of the complainant attends tuition classes. In the previous week, Kunal Jadhav and Vipul Ingawale had caused harassment to his sister. She had informed about it to the complainant. Thereafter, complainant told Krunal Jadhav, Vipul Ingawale and Shrinath Shelar that they should not trouble his sister. On 28<sup>th</sup> November, 2019, the complainant was returning home. He come across Vipul Ingawale, Krunal Jadhav, Shrinath @ Tikky Shelar, Pramod Shelar, Rahul Bhargude, Akshay Jadhav and Aniket Navgire. Vipul Ingawale stopped him. He was abused. All of them assaulted him with fist blows. Krunal Jadhav removed sickle and gave blow on the head of the complainant. Vipul Ingawale also gave blow of sickle on his head. Shrinath alias Tikya Shelar and Pramod Shelar assaulted him with bamboo stick. Akshay Jadhav and Aniket Navgire (applicant) assaulted him with fist/kick blows. All of them fled away from the place of incident. FIR was registered.

3           Approval was granted under Section 23(1)(A) of the MCOC Act for invoking the provisions of the said Act. On 3<sup>rd</sup>

January, 2019, sanction was granted under the provisions of MCOC Act vide order dated 24<sup>th</sup> May, 2019, and, Sections 3(1)(ii), 3 (2) and 3(4) of the MCOC Act were invoked against the accused.

4            Applicant preferred an application for bail before the Special Court under MCOC Act. The said application was rejected by order dated 16<sup>th</sup> August, 2019.

6            Learned advocate for the applicant Mr.Deokar made following submissions:

- (a) Provisions of MCOC Act are not attracted;
- (b) Applicant is not member of crime syndicate;
- (c) The injured had sustained simple injuries and he is out of danger;
- (d) The incident occurred suddenly in spur of moment;
- (e) Applicant is in custody from 17<sup>th</sup> December, 2018;
- (f) The applicant is not involved in any other offence with leader of the crime syndicate;
- (g) The applicant had not used any weapon in the incident of assault.

7            Learned APP Mr.Pethe submitted that the applicant has been named in the FIR. His involvement is supported by evidence. Provisions of MCOC Act are invoked against the applicant. He is member of crime syndicate. The complainant was assaulted by all the accused. There are restrictions in granting bail to the accused under the MCOC Act. He relied upon the decision of the Supreme Court of India in the case of State of ***Maharashtra Vs. Vishwanath Maranna Shetty***<sup>1</sup>. The applicant is involved in one more case registered with Khadak police station vide C.R.No.76 of 2019, for the offence punishable under Section 326 of IPC. Co-accused Tikya Shelar is involved in the said case. All the accused have assaulted the complainant. Two of them were armed with sickle. He relied upon the contents of the affidavit-in-reply filed by the Assistant Commissioner of Police Vihrambag Division, Pune, opposing the application for bail. During investigation, it is revealed that there is sufficient evidence to prove continuous unlawful activities of the organised crime syndicate headed by accused Shrinath @ Tikya Ashok Shelar and more than one charge-sheet has been filed against the gang leader viz. R.C.C.No.2442 of 2017, R.C.C.No.2383 of 2018, R.C.C.No.2326 of 2018, R.C.C.No.5905 of 2017 and R.C.C.No.247 of 2018.

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1 (2021) 10 SCC 561

8           The incident had occurred on 28<sup>th</sup> November, 2018. According to informant, the accused Krunal Jadhav and Vipul Ingawale had caused harassment to his sister, and, hence, the informant had told them not to trouble her. The incident of 28<sup>th</sup> November, 2018 is not a pre planned act. Gangleader Tikya Shelar was not involved in the previous incident of harassment to complainant's sister. The complainant was returning home and at that time he was accosted by the accused. The applicant has allegedly assaulted by fist and kick blows. The complainant knows Vipul Ingawale and Shrinath Shelar. Prior approval dated 3<sup>rd</sup> January, 2019, was obtained for invoking the provisions of MCOC Act. The applicant was not armed with any weapon. There is no confession under Section 18 of the MCOC Act. There is no incident that the applicant was associated with the crime syndicate and have indulged in the acts creating terror or violence with the crime syndicate. In the past one offence was registered against the applicant vide C.R.No.76 of 2018 under Sections 326, 143, 147 and 149 of IPC. Summary of the said offence forms part of the charge-sheet. Summary do not indicate name of applicant. It appears, he was not named in FIR. It is apparent that the applicant was not involved in the said complaint. The incident relates to breaking of the glass of the

house and threats by co-accused. The sanction order indicate that, evidence collected establishes that Srinath @ Tikya Ashok Shelar and his associates infurtherance of activities of their organised crime syndicate, committed this offence with a view to gain pecuniary benefit for themselves by threat of violence, intimidation and coercion. In the present case, there was no question of pecuniary advantage. Learned APP has relied upon the decision in the case of ***State of Maharashtra Vs. Vishwanath Shetty (Supra)***. In the said decision, it was observed that while granting bail, the High Court has not satisfied the twin conditions mentioned in Section 21(4) of the MCOC Act. While dealing with the special statue and having regard to the provisions in Sub-section 4 of Section 21, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. It would be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court further observed that the High Court had ignored the mandatory requirements. In the light of the said observations, in the present case, it can be seen that the rigor of Section 21(4) of

the MCOC Act, would not be an impediment to grant bail to the applicant. The Apex Court in the case of ***Ranjeet Singh Sharma Vs. State of Maharashtra***<sup>2</sup>, it has been observed that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court, as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. The duty of the Court at this stage is not to weigh the evidence meticulously, but, to arrive at a finding on the basis of broad probabilities. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant has not committed an offence under the Act. If such a construction is placed, the Court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is

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2 (2005) 5 SCC 294

able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.

9           On applying test as above to the facts of this case, the applicant need not be detained further in custody, despite embargo under Section 21(4) of the MCOC Act. Considering the factual aspects of the matter, bail can be granted to the applicant.

**:: ORDER ::**

- (i) Bail Application No.3204 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.424 of 2018 registered with Khadak Police Station, Pune, on executing P.R. Bond in the sum of Rs.50,000/-, with one or two sureties in the like amount;
- (iii) Applicant shall report concerned police station once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m. for the period of six months, and, thereafter, once in three month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

- (iv) Applicant shall not tamper with the prosecution evidence and shall not approach the complainant or any other witnesses;
- (v) Bail Application No.3204 of 2019, stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**