

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.476 OF 2021

(Vanish Dharampal Meshram Vs. State of Maharashtra thr. PSO PS Kamptee, Dist.
Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. D. C. Chauhan, Advocate for Applicant.
Mr. M. K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 15th NOVEMBER, 2021.

The applicant is implicated in Crime 308/2018 registered at Police Station Kamptee, District Nagpur for offences punishable under sections 392, 397, 341, 506 read with 34 of the Indian Penal Code and section 4/25 of the Arms Act. The provisions of the Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act' for short) are invoked during the investigation.

2. The crime is registered on the basis of report lodged by Mr. Sonu Bhimte alleging that he was stopped on Pawangaon Road by one person who claimed that his vehicle ran out of fuel. At that time, another Activa vehicle arrived at the scene. Two persons who were riding the Activa vehicle assaulted the informant and relieved him of two mobile phones and Rs.4000/- (Rupees Four Thousand only) cash.

3. The submission of the learned counsel Mr. Deven Chauhan is that even if the entire charge-sheet is perused, and the alleged incriminatory material *prima facie* weighed, the material against the applicant in the substantive offence in which the provisions of MCOC Act are invoked, is extremely fragile.

4. The gist of the submission canvassed by Mr. Deven Chauhan is thus:

The alleged incident occurred on 03.10.2018. The applicant was already in custody of the Kamptee Police in connection with Crime 289/2018. That on the basis of the alleged confession of the applicant in Crime 289/2018, which is inadmissible, the applicant came to be arrested in the present crime on 20.10.2018. The supplementary statement of the complainant came to be recorded on 20.10.2018. Interestingly, the FIR was registered a day earlier on 19.10.2018 in connection with the incident of 03.10.2018.

5. The test identification parade was conducted on 17.01.2019 i.e. after nearly three months and while the complainant allegedly identified the applicant, there is no subsequent statement recorded which explains or elaborates the role of the applicant in the incident. Considering the contents of the FIR which alleges that two persons who were riding A activa vehicle assaulted the complainant and robbed him of cash and mobile phones, it was imperative for the

Investigating Agency to record the supplementary statement of the complainant after the test identification parade in as much as even according to the Investigating Agency the complainant identified as many as four accused.

6. While the learned APP Mr. Pathan is seriously opposing the bail on the premise that the stringent provisions of Section 21(4) of the MCOC Act would be a fetter, I am inclined to grant bail in as much as in the substantive offence there does not appear to be credible material on record to link the applicant with the crime. This is only a *prima facie* observation made for the purpose of considering the entitlement to bail.

7. Considering the nature of the material on record, I am inclined to record a satisfaction that reasonable grounds exist to believe that the applicant may not be involved in commission of offence punishable under the MCOC Act. A further satisfaction can be recorded that the applicant is not likely to indulge in offence punishable under the MCOC Act, if released on bail.

8. Considering the antecedents of the applicant, stringent conditions will have to be imposed for bail.

9. The application is allowed subject to the following conditions:

[i] The applicant shall be released on bail on

executing personal bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with a solvent surety of like amount.

- [ii] The applicant shall not indulge in any criminal activity while on bail. Even a singular violation of this condition shall entail cancellation of bail.
- [iii] The applicant shall report at the Assistant Commissioner of Police, Kamptee every Monday between 10:00 a.m. to 02:00 p.m. and shall obtain acknowledgment of attendance in a diary separately maintained. Breach of this condition shall also result in cancellation of bail.
- [iv] The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.
- [v] The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE

NSN