

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

CRIMINAL APPLICATION (BA) NO.500 OF 2021

(Salim Chand Khan Pathan Vs. State of Maharashtra thr. PSO PS Nagbhid, Dist.
Chandrapur)

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

Court's or Judge's orders.

Mr. R.R. Vyas, Advocate with Mr. M.V. Wasekar, Advocate for Applicant.
Mr. N.S. Rao, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 11th AUGUST, 2021.

The applicant, who is in custody since 11.11.2018, is seeking bail in connection with Crime 439/2018 registered with Police Station Nagbhid, District Chandrapur for offences punishable under sections 302, 307, 353, 332, 333, 201, 363, 417, 403 and 120-B of the Indian Penal Code, section 65(a), 82 and 83 of the Maharashtra Prohibition Act and section 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

2. The prosecution case is that secret information was received that one white colour Scorpio vehicle bearing registration MH-34 AM-281 will be proceeding towards village Morshi with stock of liquor, which would be sold in prohibited area.

3. Pursuant to such information, police staff led by PSI Chide barricaded the road, the vehicle approached and was signaled to stop, the driver of the Scorpio vehicle Prasnajit @ Chotu Parimal Haldar mowed down PSI Chide, who succumbed to the multiple serious injuries suffered. The Scorpio vehicle then proceeded to Advani Dhaba at Pachgaon Road, Nagpur where the contraband liquor was unloaded on the instructions of the alleged leader of the organized crime syndicate Shahjad Shaikh.

4. The provisions of the Maharashtra Control of Organized Crime Act (MCOC Act) are invoked during the course of investigation and the role attributed to the applicant in the crime is that he was travelling in the Maroti Dzire vehicle which was accompanying the Scorpio. The implication of the applicant in the offences punishable under the MCOC Act is on the premise that he is a member of the Shahjad Shaikh organized crime syndicate.

5. I have scrutinized the material on record on the anvil of the test envisaged by section 21(4) of the MCOC Act, and having done so, I am satisfied that reasonable grounds exist to believe that the applicant may not be involved in offence punishable under the MCOC Act.

6. In so far as the offence under section 302 of the Indian Penal Code which acted as the trigger to activate the provisions of the MCOC Act, *prima facie*, there is no

material on record to implicate the applicant in the alleged mowing down of PSI Chide. Irrefutably, the applicant was not travelling in the 'killer vehicle' and was travelling in the accompanying vehicle, is the case of the prosecution. Considering the material on record, it is difficult to record even a *prima facie* finding that the applicant shared either a common intention or was a co-conspirator, in the alleged crime.

7. The crime details placed on record reveals that apart from the crime in question, the applicant faced one prosecution under section 302 of IPC, and the crime was registered in the year 2013 at Pune and the applicant is acquitted and the only other offence which is registered is under the provisions of the Maharashtra Prohibition Act, 1949 (1949 Act).

8. I have not come across any material to suggest that the applicant was linked, in any manner, with the alleged continuing unlawful activity of the alleged organized crime syndicate. Concededly, the applicant is not arraigned as accused in any crime registered either against the alleged leader of the organized crime syndicate or the members of the organized crime syndicate. It is not necessary, and therefore, I have consciously refrained from rendering a positive finding on whether the crime chart of the alleged organized crime syndicate reveals continuing unlawful activity or commission of organized crime within

the meaning of section 2(d) and (e) since the copies of the charge-sheet filed in the crime allegedly registered against the gang leader Shahjad Shaikh are not placed on record. In any event, in view of my satisfaction that the provisions of MCOC Act could not have been invoked, at least qua the applicant, such exercise is unnecessary.

9. The only crime which involves allegation of use of violence was registered in the year 2013 and the applicant stands acquitted. In my considered view, a further satisfaction can be recorded that if released on bail the applicant is not likely to commit an offence punishable under the MCOC Act.

10. The twin test envisaged under section 21 (4) stands satisfied.

11. A case for grant of bail is made out. The application is allowed subject to the following conditions:

- (i) The applicant shall execute the personal bond of Rs.15,000/- with one solvent surety of the like amount.
- (ii) The applicant shall report at the concerned police station on the 15th and 30th day of every month.
- (iii) The applicant shall, within forty-eight hours of release, furnish to the I.O. his current address

and phone numbers and shall update the I.O. of any change.

- (ii) The applicant shall not indulge in any criminal activity. Any breach of this condition may *ipso facto* entail cancellation of bail, if an appropriate motion is moved by the prosecution.
- (iii) The applicant shall not make any attempt to influence the witnesses, directly or indirectly.
- (iv) The applicant shall not leave the country without the permission of the trial court.

12. The application is disposed of accordingly.

JUDGE