

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

Criminal Application (BA) No. 1007 of 2020

[Suraj Saroj Chaudhari ..vs.. The State of Maharashtra (through Ambazari P. S., Nagpur)]

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

Court's or Judge's orders

Mr. R. M. Daga with Mr. M. N. Ali, Advocates for the applicant
Mrs. K. R. Deshpande, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 19-07-2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the visual quality was proper.

2. Heard the learned counsel for the applicant Mr. Daga who is appearing along with the learned counsel Mr. Mir Nagman Ali and the learned Additional Public Prosecutor Mrs. Deshpande for the State/non-applicant.

3. The applicant is arraigned as accused 3 in Crime 359/2020 registered with Ambazari Police Station for the offences punishable under Sections 395, 397 and 427 of the Indian Penal Code read with Section 4/25 of the Arms Act and offences punishable under Sections 364-A,

386, 387, 120-B, 212 read with Section 34 of the Indian Penal Code, Sections 3, 7(a), 25 of the Arms Act read with Section 135 of the Maharashtra Police Act and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime (MCOC) Act.

4. The crime is registered on the basis of report dated 30-8-2019 lodged by Mr. Prashant Ambatkar with the Additional Commissioner of Police (Crime), Nagpur which was forwarded by the said Officer to the concerned unit.

5. The learned counsel for the applicant Mr. Daga submits that the report, on the basis of which the crime is registered, is not the report or complaint lodged with the Additional Commissioner of Police (Crime) but appears to be a complaint dated 4-9-2019 made to Police Station, Ambazari.

6. Be that as it may, the gist of the report is that the first informant is a businessman engaged in distribution of country liquor.

7. It is alleged that on 26-8-2019, the first informant received a call from co-accused Shiva, a close associate of the leader of crime syndicate. The applicant was summoned to Shankar Nagar Square. Shiva arrived in a Creta car and was accompanied by two unidentified persons. When the first informant inquired with Shiva as to why he summoned, he was told that Shekhu (alleged gang leader) has called him. Shiva who was driving the car then proceeded towards Amravati Road and after crossing the toll, took out a pistol and handed over the same to the applicant. Shiva allegedly asked the applicant to load the firearm and to aim the same at the head/ears of the first informant and the applicant allegedly obliged. The rest of the report vividly describes the meeting with the gang leader, the fear of death instilled in the first informant and the manner in which the first informant was forced to pay Rs. 10,00,000/- to the gang.

8. The first submission of Mr. Daga is that since the applicant is not named in the complaint lodged by the

first informant with the Additional Commissioner of Police (Crime), the first information report subsequently lodged/registered is of doubtful veracity. The submission is considered only for rejection. The first report which is a complaint-cum-report specifically names the applicant. It is further disclosed in the report-cum-complaint that the first informant was abducted and forced to accompany the applicant and co-accused to the forest. The only additional role in the first information report subsequently registered is that the applicant was allegedly handed over a firearm which he loaded and pointed at the first informant. In my considered view, whether the first or the second, a report is not expected to be an encyclopedia. The fact of the matter is that the applicant is named specifically as a kidnapper and his role is vividly spelt out. The first submission takes the case of the applicant-accused any further.

9. The other submission is that the applicant did not accompany the co-accused who collected the ransom. Again the submission does not take the case of the

applicant any further. Whether the applicant as a fact accompanied the co-accused who collected the ransom is irrelevant. The accusation is that the applicant entered into a criminal conspiracy. Section 120-B is invoked which creates an independent offence. In the alternate, Section 34 is also invoked. It is too well settled to warrant any reference to the precedents, that every person who is a party to a conspiracy, need not be a party to every act or part of the conspiracy and indeed may not be even aware of what is happening, save and except, the part of which he is assigned the responsibility. In any event, there is more than ample material on record to hold that the applicant, as a part of the conspiracy and as a member of an organized crime syndicate, was actively involved in the crime. Even if, it is assumed for a moment that he did not collect ransom and his partners in crime did the collection, that aspect is absolutely irrelevant.

10. The next submission is that two co-accused are released on bail. The submission which invokes the

principle of parity is made ignoring the fact that the co-accused who are released are not facing prosecution under MCOC Act. It is, therefore, not necessary to compare their role with the role of the applicant. Since the provisions of MCOC Act are invoked against the applicant, this Court is precluded from releasing the applicant on bail unless the Court is satisfied that reasonable grounds exist to believe in the innocence of the applicant and that the applicant shall not commit similar offence while on bail. In this view of the matter, the fact that the co-accused against whom MCOC Act is not invoked are released on bail is irrelevant.

11. The final submission is that CDR record does not establish that the applicant was in contact with gang leader Shekhu. Again the submission is irrelevant in the sense that the material on record *per se* establishes the link between the gang leader and the applicant. As a fact, the applicant was one of the three or four members of the gang headed by Shekhu who kidnapped the first informant. The applicant was allegedly present in the

forest where the first informant was taken. The fact that there is no record of telephonic contact between the applicant and the gang leader is immaterial.

12. No other submission is canvassed.

13. Considering the overwhelming material on record against the applicant, it is difficult to record a satisfaction of existence of reasonable grounds to believe in the innocence of the applicant. The application is rejected.

JUDGE

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