

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

CRIMINAL APPLICATION (BA) NO. 1089 OF 2021

(Digambar @ Aditya s/o Raju Sorte ..vs.. State of Maharashtra, through PSO, PS Ram Nagar, District
Gondia)

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

Court's or Judge's orders

Mr. C.R. Thakur, Counsel for the applicant,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 02-12-2021

Applicant Digambar @ Aditya Sorte is seeking bail in connection with Crime 19/2021 registered at Ram Nagar Police Station, Gondia initially for offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC). During the course of investigation, the provisions of Sections 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act (MCOC Act) and Section 120-B of the IPC are invoked.

2. The prosecution case is that Raju Bambhare, who is the brother of the deceased Raviprasad lodged report dated 15-1-2021 alleging that Raviprasad was a sand supplier and had formed a partnership with co-accused P.T. Chachere which ran into heavy weather due to monetary dispute. Raviprasad started supplying sand independently since November 2020. Raju alleged that four to five days prior to the incident P.T. Chachere had

threatened to kill Raviprasad.

According to the report, at 10-48 p.m. on 14-1-2021 Rahul Thakrele telephonically informed Raju that P.T. Chachere and his associates had murdered Raviprasad near the Sahyog Hospital.

3. During the course of investigation, statements of several eyewitnesses are recorded. The incident is captured in CCTV footage and a panchanama of the footage is filed alongwith the charge-sheet.

4. Considering the limited role attributed to the applicant, it would not be appropriate to minutely examine every material in the charge-sheet lest some prejudice is caused to the co-accused. It is common ground that neither the eyewitnesses nor the CCTV footage indicate the presence of the applicant at the scene. It is not in dispute that the applicant was not one of the assailants. However, what is alleged is that the applicant supplied a knife to accused 1-Shubham Chawhan. Notably, the brutal assault on Raviprasad was allegedly launched by as many as four assailants including Shubham Chawhan. The assailants allegedly went to the spot in a Mahindra Scorpio vehicle. Subham Chawhan is facing as many as fifteen prosecutions. It is not even the case of the prosecution that the other three assailants were not carrying their weapons in the Mahindra Scorpio vehicle. In such circumstances, the prosecution version that Shubham Chawhan followed the

Scorpio vehicle only to hand over a knife to Shubham Chawhan must be taken with a pinch of salt since there is no reason why Shubham Chawhan, an “accomplished criminal” could not have carried his weapon in the Scorpio vehicle. The other allegation against the applicant is that after committing the heinous crime, co-accused Shubham Chawhan used the mobile phone of the applicant.

5. The first question which shall have to be answered is whether *prima facie* the provisions of the MCOC Act could have been invoked qua the applicant.

6. While there are numerous prosecutions registered against the co-accused Shubham Chawhan who allegedly is the leader of the organized crime syndicate and the other accused, it is conceded that the applicant is not involved in any previous criminal activity of the organized crime syndicate. The material on record does not connect the applicant with the previous unlawful activities of any member of the organized crime syndicate. In such a situation, and strictly as a *prima facie* observation, the invoking of the provisions of the MCOC Act would be highly contentious.

7. In ***Prasad Shrikant Purohit v. State of Maharashtra and another***, 2015 ALL MR (Cri) 2853 (SC), the Apex Court granted bail to Prasad Shrikant Purohit on the premise that while Prasad Shrikant

Purohit is an accused in the bomb blast at Malegaon, he is not shown to be involved or otherwise connected with the bomb blast which took place at Parbhani in 2003 and Jalna in 2004. Pertinently, the Apex Court rejected the bail of the co-accused Rakesh Dhawade on the premise that against Rakesh Dhawade supplementary charge-sheet was filed in connection with the earlier bomb blasts at Parbhani and Jalna. The Apex Court noted the earlier decision in ***State of Maharashtra & Others v. Lalit Somdatta Nagpal & Another, (2007) 4 SCC 171***, and in paragraph 87 of the report observes thus :

“87. When we refer to the said line of reasoning stated therein, we find that in the case of one accused, namely, one Kapil Nagpal, since he was not shown to be involved in any of the earlier cases, his case required to be dealt with differently and he cannot be said to have been involved in any continuing unlawful activity. We do not find any other specific reason for excluding him.”

8. Illuminating are the observations of the Apex Court in the passages reproduced below :

“90. Having regard to the said legal position with reference to the requirement to be fulfilled in respect of an 'organized crime' with particular reference to the past two instances and the present one in order to find out as to whether a person was involved in a 'continuing unlawful activity', when we refer to the facts before us, in the case on hand insofar as A-7 Rakesh Dattaray Dhawade is concerned, he has been charge-sheeted in Parbhani, Jalna as well as, the Malegaon bomb blast. The materials

available on record disclose that he furnished certain materials at the asking of the prime accused involved in Parbhani and Jalna, which also related to bomb blasts in both the places. Going by the charge-sheet filed against A-7 in Malegaon his direct involvement has been alleged. A conspectus consideration of the above facts discloses that insofar as A-7 was concerned, he had a nexus with the member of an 'organized crime syndicate' and also had every nexus with the offence in the nature of an 'organized crime' of the two earlier cases, namely, Parbhani and Jalna and also direct involvement in the present bomb blast at Malegaon. In such circumstances, there is no difficulty in coming to a definite conclusion that insofar as, A-7 is concerned, his activity and involvement in all the three occurrences, namely, Parbhani, Jalna and Malegaon disclose nexus with the crime and also with the other accused involved in the crime and thereby the satisfaction of the definition of 'continuing unlawful activity' of an 'organized crime' on behalf of an 'organized crime syndicate' is satisfactorily shown. In such circumstances, by virtue of Section 21(4) of MCOCA he is not entitled for the grant of bail and that he does not fall within the excepted category stipulated in sub-clause (a) or (b) of the said sub-Section (4) of Section 21.

91. *Having stated the said position relating to A-7, when we come to the case of others, there is no dispute that in respect of other appellants, their involvement is with reference to the present occurrence, namely, Malegaon bomb blast. Admittedly they are not proceeded against for the offence relating to Parbhani and Jalna. But still at the present juncture, with the materials available on record as on date, we are not in a position to ascertain as to the involvement of the appellants either by way of their nexus with any accused who is a member*

of an 'organized crime syndicate' or such nexus with the offence of an 'organized crime' which pertains to Parbhani and Jalna. We cannot also rule out the possibility of the evidence based on the investigation by the prosecuting agency to come out with reliable materials in support of such nexus to be shown with an accused or with the crime in respect of the earlier two cases, namely, Parbhani and Jalna. We cannot, therefore, declare to the extent as was done by the Special Judge in the order dated 31.07.2009 to straightway reach at a conclusion to the effect that MCOCA was not attracted and, therefore, they should be discharged.

92. *But, for the purpose of the requirement under Section 21(4)(b) having regard to the absence of any material as on date to disclose any nexus with the accused of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime', in Parbhani and Jalna as of now we can state that in respect of appellants other than A-7 i.e. appellant in Criminal Appeal No.1971/2010, their application for bail can be considered by the Special Court. Therefore, on this issue, namely, in all cases same gang must be involved, our answer is to the above limited extent based on the earlier statement of law as declared in Ranjitsing Brahamjeetsing Sharma, (2005) All MR (Cri) 1538 (SC) (supra) in paragraph 31.*

99. *In the light of our above conclusions on the various submissions, we are convinced that in respect of the appellant in Criminal Appeal No.1971/2010, namely, A-7, there is no scope even for the limited purpose of Section 21(4) (b) to hold that application of MCOCA is doubtful. We have held that the said appellant A-7 had every nexus with all the three crimes, namely, Parbhani, Jalna and Malegaon and, therefore, the bar for grant of bail under*

Section 21 would clearly operate against him and there is no scope for granting any bail. Insofar as the rest of the appellants are concerned, for the purpose of invoking Section 21(4)(b), namely, to consider their claim for bail, it can be held that for the present juncture with the available materials on record, it is not possible to show any nexus of the appellants who have been proceeded against for their involvement in Malegaon blast with the two earlier cases, namely, Parbhani and Jalna. There is considerable doubt about their involvement in Parbhani and Jalna and, therefore, they are entitled for their bail applications to be considered on merits.”

What is held by the Apex Court that if the accused has no nexus with the past unlawful activities of the organized crime syndicate, invoking of the provisions of the MCOC Act would be arguable.

9. The entitlement to bail shall have to be tested on the touchstone of Section 439 of the Criminal Procedure Code de-hors the twin conditions incorporated in Section 21(4) of the MCOC Act and having done so, I am inclined to grant bail for reasons briefly spelt out hereinafter.

10. The applicant is aged 19 years and he has no criminal antecedents. The role attributed to the applicant is limited. It is not even the case of the prosecution that the applicant shall not be available to face the trial.

11. The application is allowed.

12. The applicant shall be released on bail on executing personal bond of Rs.16,000/- (Rupees Sixteen Thousand) with a solvent surety of like amount.

13. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

14. The applicant shall attend each date of hearing scrupulously.

15. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

adgokar