

Santosh

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

CRIMINAL APPLICATION NO. 230 OF 2022

Dnyaneshwar Vitthal Chorpade & ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

Mr. Rupesh Zade, for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 13th July, 2022

ORDER:-

1. The legality, propriety and correctness of an order passed by the learned Additional Sessions Judge, Pandharpur, dated 1st February, 2022, in Criminal Misc. Application No.1018 of 2021, whereby permission was granted to Sub-divisional Police Officer, Mangalvedha, to arrest the applicants in CR No.1562 of 2020, registered with Sangola Police Station, District Solapur, for the offences punishable under Sections 120B, 394 and 395 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ("the MCOC Act"), is assailed in this application.

2. Initially the applicants were arraigned as accused nos.1, 3, 4, 5, 7 and 8 in CR No.1562/2020, for the offences punishable under Section 394 read with Section 34 of the Penal Code, on the strength of the report lodged by Chhaya Ashok Chormale (the first informant) to the effect that on 16th December, 2020, on the pretext of dropping her at Kadlas an unknown person asked her to board a four-wheeler, without a number-plate. Three associates of the said person joined them near the petrol-pump. The first informant suspected foul play. They did not allow her to alight from the car. When she tried to raise alarm, her mouth was gagged and her legs were tied by a cloth. She was robbed of gold necklace and gold marriage strings. She was assaulted and relieved of ear-rings and nose-studs. Thereafter she was dropped near a secluded place.

3. The applicants were arrested and released on bail by various orders passed by the learned Additional Sessions Judge. Subsequently, the investigating agency has invoked the provisions contained in Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act as it transpired that the applicants were the members of an organized crime syndicate and indulged in continuing unlawful activities. The Sub-divisional Police Officer

thus filed an application on 29th October, 2021, seeking permission to arrest the applicants.

4. By the impugned order dated 1st February, 2022, the learned Additional Sessions Judge, Pandharpur, was persuaded to grant permission to arrest the applicants.

5. Mr. Zade, the learned Counsel for the applicants would urge that impugned order suffers from legal infirmity. Bail once granted by the learned Additional Sessions Judge, after ascribing reasons, could not have been indirectly cancelled by granting permission to the Investigating Officer to arrest the applicants.

6. I have perused the impugned order and the material on record. The learned Additional Sessions Judge upon consideration of the material has recorded a tentative view that the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act are, *prima facie*, made out. It was further observed that further investigation was warranted. Upon perusal of the material on record, I do not find any reason to take a different view of the matter on facts.

7. On the legal premise also, the impugned order seems to be on a surer foundation. The learned Additional Sessions Judge relied upon the pronouncement of the Supreme Court in the

case of *Pradeep Ram vs. State of Jharkhand and another*¹, wherein the Supreme Court considered *inter alia* the following question:

“9.1(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?

8. After adverting to the previous pronouncements, the Supreme Court answered the aforesaid question in the following terms:

“31. In view of the foregoing discussions, we arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added:-

31.1 The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2 The investigating agency can seek order from the court under Section 437(5) or 439(2) of CrPC for arrest of the accused and his custody.

31.3 The Court, in exercise of power under Section 437(5) or 439(2) of CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

31.4 In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.

32. The issue No.1 is answered accordingly.”

1 (2019)17 Supreme Court Cases 326.

9. The aforesaid enunciation thus constitutes a complete answer to the challenge sought to be raised by the applicant in the instant application. Resultantly, the application fails.

10. Hence, the following order:

: O R D E R :

The application stands rejected.

[N. J. JAMADAR, J.]