

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.599 OF 2021**

Sagar Shivamani Patil .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO.2029 OF 2021**

Akshay Shiva Mini @ Patil .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Veerdhaval Deshmukh for the Applicant in BA/599/2021.

Mr.Amrish Salunke with Mr.Jigar Agarwal, Mr.Durgesh Sarfare and Mr.Sidhant Kusalkar for the Applicant in BA/2029/21.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 29th SEPTEMBER, 2022**

P.C:-

1. The two applicants have been charged under Sections 307, 323, 324, 387, 504, 506(2), 143, 144, 145, 147, 148, 149 of the Indian Penal Code (for short, “**the IPC**”) alongwith Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, “**the MCOCA**”). In all 9 persons are charged for the aforesaid offences in C.R.No.130 of 2019, registered with Aarey Police Station.

2. Bail Application No.599 of 2021 was received through jail. Advocate Veerdhaval Deshmukh was appointed as a counsel to represent the applicant, since his name is included in the list maintained by the High Court Legal Services Authority. Learned A.P.P. was directed to file an affidavit, since the provisions of MCOCA were invoked.

While the application was being heard, it was noticed that Bail Application No.2029 of 2021, filed by one of the co-accused, is also pending and the charge-sheet is placed on record in the said application. Therefore, both the applications were directed to be tagged together and the respective counsel for the applicants have argued the applications, on the basis of the material compiled in the charge-sheet, which is placed on record in Bail Application No.2029 of 2021.

3. I have heard learned counsel Mr.Amrish Salunke appearing for the applicant in Bail Application No.2029 of 2021, learned counsel Mr.Veerdhaval Deshmukh for the applicant in Bail Application No.599 of 2021 and learned A.P.P. Mr.Yadav has represented the State. The State has filed it's affidavit in both the applications.

4. The charge-sheet would reveal that C.R.No.130 of 2019 was registered with Aarey Police Station against one Shiva Shetty, Suresh and Kundan and seven unknown persons on 08/07/2019, on a complaint filed by the complainant stating therein that he is into the business of preparing set for films and TV serials and there are some other contractors in the film

city, who are engaged in the said job. The prosecution allege that Shiva Shetty formed a gang and indulged himself in giving threats to the other contractors, so that they leave the jobs. The prosecution allege that the gang leader was involved in the crime of extortion, so that the contractors appointed by him and who were on his regular payroll would secure the job and pay him regular amount. Considering his criminal nature and past antecedents, it is alleged that he has created a reign of terror and, therefore, no one dared to lodge complaint against him.

As per the prosecution case, the complainant was awarded a contract for creating a set for one serial titled as 'Karnsangini' and the contract was awarded for one month. On 08/07/2019, the complainant got transmitted one information on phone that Shiva Shetty and his nine associates have threatened to stop the said work. The complainant rushed to the spot and met him and he accuse that Shiva Shetty demanded ransom and also assaulted the complainant and others with the help of an iron rod and by fist and blows. In the said incident, two witnesses sustained serious injuries and it is alleged that the attempt of Shiva Shetty and his associates was to do them to death. By hurling abuses and brandishing weapons, it is alleged that they created terror on the spot and peoples started running helter-skelter. The complainant and his workers also took to their heels and reported the incident to the Aarey Police Station, which resulted in invoking an offence of attempt to murder alongwith other co-related offences.

During the course of investigation, the spot panchnama was conducted and three iron rods were seized from the spot, one was alleged to have blood stains. It was forwarded for analysis, but the report is awaited.

5. In the said C.R., prior approval was obtained under Section 23(1)(a) of MCOCA from the Additional Commissioner of Police, North Region, Mumbai on 23/09/2019 to invoke the provisions of MCOCA against 10 accused persons. The Commissioner of Police, Brihan Mumbai, accorded sanction under Section 23(2) of MCOCA on 26/10/2019 and the investigation commenced in the said C.R. against 10 persons, who were alleged to be involved in the said crime. The charge-sheet was filed on 23/02/2020 and applicant Akshay Patil was arrested on 06/12/2019, whereas applicant-Sagar Patil was arrested on 20/07/2019 and they seek their release on bail, by claiming their innocence and submitting that they are incarcerated for more than three years, with no charge being framed till date.

6. I have perused the charge-sheet placed on record, which alleged that Shiva Shetty, the gang leader, is involved in various offences of assault, dacoity, extortion etc. and the prosecution allege that these offences were committed by him with the help of different associates. He is assigned a role of the leader of the organised crime syndicate and it is alleged he alongwith his associates, which include the applicants, have indulged themselves into the riots and attempted to murder

the witnesses, when the demand of extortion was not satisfied. It is alleged that the crime was committed with the objective of pecuniary gains and for benefits of the members of organised crime syndicate, by using threat of violence and also in order to carry out the extortion activities. The material against the gang leader in form of various charge-sheets are compiled in the charge-sheet of the present C.R.. The injury certificates are compiled in the charge-sheet and it reveal that two injured sustained simple injuries, one having sustained a CLW on scalp, whereas the other has sustained CLW and abrasion over nose.

Learned counsel Mr.Salunke would submit that there is a cross-case registered vide C.R.No.129 of 2019 and, therefore, the version of the complainant, which resulted in invoking the MCOC case is not trustworthy. Learned counsel has invited my attention to the injury certificates placed in the cross FIR, including that of Shiva Shetty, who has sustained swelling over right upper lid and Arshad Ali Shaikh, who sustained fracture on left elbow, which has been described as grievous injury.

The argument advanced is, a free fight ensued between the two groups and even the accused persons are assaulted and sustained injuries.

As far as the present applicants are concerned, it is argued that, there is no material in the charge-sheet to establish that they are the members of the organised crime syndicate and even their participation in the present incident is doubtful.

7. Leaned A.P.P. has placed reliance on the affidavit, where it is submitted that during the course of investigation, statements of two injured witnesses came to be recorded and both the applicants are specifically claimed to be present on the spot and the witness specifically stated that he was knowing the said persons. The statements of the witnesses are placed on record alongwith the affidavit. Apart from this, the prosecution also rely upon the statements of the witnesses under Section 164 of Cr.P.C. The injury certificates are also annexed with the affidavit.

8. When the statements of the witnesses are meaningfully read, while narrating the incident, the names of the applicants are taken as the persons present on the day of incident alongwith Shiva Shetty. When Shiva Shetty was asked the cause for arriving at the spot, he is alleged to have abused and he was questioned, why the contract was given in his favour to which, he has responded by stating that he has submitted quotations. He was threatened that some amount should be parted and it is the version of the witness that the persons present, started assaulting the witness as well as the complainant.

It is alleged that there was incessant assault on the complainant and the witness, but unfortunately, the injury certificates do not corroborate the said statement. The prosecution has relied upon the CDR to reflect that the applicant was present on the spot.

As far as the statement under Section 164 is concerned, which is annexed alongwith the affidavit, I do not see any specific role attributed to the present applicant, except stating that Sagar Patil was present there and Shiva Shetty is alleged to have assaulted Babu Subramaniam, the complainant. In the 164 statement, there is no mention of Akshay Patil, but there is mention of presence of 4 to 5 persons. The prosecution alleged that both the applicants have been identified in the test identification parade by the complainant and the witness.

9. Both the applicants are charged, as being members of the organised crime syndicate and associates of the gang, headed by Shiva Shetty. The affidavit has given the list of offences, which are registered against Shiva Shetty. As far as Akshay Patil is concerned, it is alleged that he also has offences to his credit, but in the affidavit it is alleged that both the applicants are brothers and the distinct offences are registered against both of them. The list of offences is given in the two distinct affidavits.

When the learned A.P.P. is asked to ascertain the commonality of the offences with the gang leader in order to establish that the two applicants were associated with him and operating as organised crime syndicate, learned A.P.P. states that there is no commonality, as every time the gang leader used to commit the offence with different members.

The said submission cannot be accepted, as in order to establish the charge under MCOCA, it is necessary to establish the continuing unlawful activity prohibited by law is

undertaken either singly or jointly as a member of the organised crime syndicate or on behalf of such syndicate in respect of which, more than one charge-sheet has been filed before the competent Court within a preceding period of 10 years.

An organised crime is understood for the purposes of the said act is a continuing unlawful activity, which is carried out as a member of the crime syndicate by use of violence or threat or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefits. The organised crime syndicate for the purposes of the Act means a group of two or more persons, who acting either singly or collectively, as a syndicate or gang indulged in activity of organised crime. Since the necessary ingredients of establishing that the applicants are the members of a crime syndicate, headed by Shiva Shetty, have not surfaced on record through the case of the prosecution, further incarceration of the applicants is unnecessary as otherwise being participants in the subject crime, which has accused them of an offence under Section 307, they otherwise deserve their release on bail.

Hence, the following order.

: **ORDER** :

- (a) Application is allowed.
- (b) Applicant -Sagar Shivamani Patil (**Bail Application No.599 of 2021**) and applicant- Akshay Shiva Mini @ Patil (**Bail Application No.2029 of 2021**) shall be released on bail in connection with C.R.No.130 of 2019 registered with Aarey Police Station, on furnishing

P.R. Bond to the extent of Rs.25,000/- each, with one or two sureties in the like amount.

(c) The applicants shall mark their attendance before the concerned police station on first Monday of every month between 3.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)