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Sections 3(1)(ii), 3(4) of Maharashtra Control of Organized Crime Act ('MCOCA' for short).

2 The prosecution case in short is that while the informant along with his friends was returning after dinner from a hotel at about 10-45 p.m. in his Ciaz car, one purple colour Swift car bearing registration No.MA-14 HD 8365 came in front of his car and blocked them. Six persons got down, abused and threatened the informant and told that the informant's car had dashed one person and dragged the informant out of his car. The prosecution alleges that the informant was forced to sit in their Swift car and was driven towards Dange Chowk, Kelwadi Phata, Jyotiba Nagar, Rahatani Road, Pune. The prosecution further alleges that in the car the informant was threatened and beaten by one of them who claimed himself as Ankit Choudhary, a known offender, and then forced the informant to withdraw moneys from ATM. Even informant's friend, namely, Sumit Panchal was forced to withdraw moneys from the ATM. In all Ankit Choudhary extorted total amount of Rs.25,000/- from the informant and his friend and later on dropped them to their car. The informant accordingly lodged

the First Informant Report (FIR).

3 Mr. Shirke, learned Counsel for the applicant, submits that the sanctioning authority without application of mind granted sanction despite their being no sufficient and necessary material to justify the invocation of provisions of MCOC Act. There is absolutely no evidence on record to show that the applicant is a member of crime syndicate. No recovery has been done from the applicant. There are no criminal antecedents. Investigation is over. In such circumstances, the applicant deserves to be enlarged on bail, argued learned APP.

4 Ms. Shinde, learned APP, on the other hand, opposed the submissions and invited my attention to the confessional statement of co-accused, namely, Samir Devidas Borkar and would submit that the role of present applicant is specifically given by the co-accused. Having regard to the nature of offence, the applicant does not deserve to be released on bail, argued learned APP.

5 Perused the investigation papers.

6 In the case of **Mahipal Singh vs. Central Bureau of Investigation and Another**¹, it has been held by the Hon'ble Apex Court that in order to constitute an offence of organized crime, it has to be established that the accused is involved in "continuing unlawful activity" defined in Section 2(1) (d) of MCOC Act i.e. more than one charge-sheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before competent Court within preceding period of 10 years and the Court has taken cognizance of such cases. The Hon'ble Apex Court further held that for invocation of offence of organized crime, ingredients constituting that offence must exist on the date the crime is committed or detected. Similar observations can be noted from the judgments in **Dinesh Bhondulal Baisware vs. State of Maharashtra**² and **Prasad Shrikant Purohit vs. State of Maharashtra and Another**³

7 From the record, it is apparent that except the crime in question no other antecedents are brought on record. Learned APP was also not able to point out on what basis the provisions of MCOC Act were invoked against the applicant. In such

1 (2014) 11 Supreme Court Cases 282,

2 2016(4) Bom. C.R. (Cri)149

3 (2015) 7 Supreme Court Cases 440

circumstances, even though there is confessional statement of co-accused Samir Devidas Borkar but that statement also being exculpatory in nature could not be prima-facie used against the applicant. It is also not disputed that there was no recovery from the applicant. Investigation is over. Charge-sheet has been filed.

8 In the light of material on record, in my considered view, as there is no bar of Section 21(4) of the MCOC Act, the applicant deserves to be enlarged on bail. Hence, the following order.

ORDER

(i) Applicant- Mayur Shivaji Bhosale shall be released on bail in C.R. No. 168 of 2020 registered with Wakad Police Station, District- Pune on his executing P .R. bond in the sum of Rs.25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its

nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)

REKHA
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