

2. The prosecution case is that the Complainant was a friend of one Rahul Vishwakarma. He was warned by co-accused Dadya Holkar and others not to accompany Rahul Vishwakarma. The Complainant was also threatened by the co-accused that if he did not heed to their warning he will be killed. On 2nd July, 2017 at about 7.30 p.m. the Complainant was at his aunt's house. At about 11.30 p.m. the Accused armed with sword, sickle and sticks unlawfully entered into the house of the Complainant's aunt by breaking the door. The Accused assaulted the Complainant with weapons. The Complainant was dragged out of the house and made to sit on motorcycle and he was taken towards Mamurdi Village. When they reached near Shinde Petrol Pump, police vehicle arrived and the Complainant shouted for help. Therefore, all the Accused started assaulting him by weapons. On noticing police vehicle reached near the spot of incident Accused ran away from the spot.

3. Learned Advocate Mr. Joshi appearing for the applicant in Bail Application No.1413 of 2021 submitted that the applicant is in custody from 13.07.2017. There is no progress in the trial. Except the present case, there is no other case registered against the applicant. He has no past history. As far as the offence under

Section 307 of IPC is concerned, considering the fact that he is in custody for substantial period of time, bail may be granted to him. It is also submitted that the confessional statement of accused No.3 Shubham @ Chotya Sanjay Gove is recorded which only refers to the current crime and not to the past. Approval refers to current case. He relied upon the decision of the Apex Court in the case of Mohammad Ilias @ Mohammad Bilal Kapadia V/s. State of Gujarat passed in Leave to Appeal No.1815 of 2022 and another decision passed by the apex Court in the case of **Yogesh Vinod Ahiwale V/s State of Maharashtra** in Special Leave to Appeal (Crl.) No.8496 of 2022.

4. Learned Advocate Mr. Nikam appearing for the applicant in Bail Application No.1879 of 2022 submitted that the applicant is in jail from 29.11.2017. The role attributed to the applicant in the principle offence is that he was armed with stick which was recovered under Section 27 of the Evidence Act but there are no corresponding injury on the person of the injured qua use of the stick. The previous cases were registered in the year 2016. The applicant is in prolong custody for a period of about five years which affects his right under Article 21 of the Constitution of India and in view of decision of the apex Court in the case of **Yogesh**

Vinod Ahiwale V/s State of Maharashtra (supra), the applicant may be granted bail.

5. Learned APP submitted that the injured had suffered several injuries. Specific role has been attributed to the applicants. As far as the applicant Vishal Khedekar is concerned, the approval had referred to the current case. The said applicant was armed with sickle and he has been attributed role of assaulting the injured. He relied upon the injury certificate and submitted that there are several injuries on the person of the victim which are of serious nature. It is further submitted that single case is sufficient to invoke the provision of MCOC Act, when there is evidence to show that the accused had acted as a member of crime syndicate with the gang leader or with any member of the gang. He relied upon the decision of the apex Court in the case of **Kavitha Lankesh V/s. State of Karnataka & Ors. 2021 SCC Online SC 956**. It is submitted that the said decision were delivered by larger bench which is not considered in a recent order relied upon by the learned Advocate appearing for the applicant. It is submitted that in the decision of the larger bench, the apex Court has considered this aspects and its support his statement that in the event of material before the Court indicating that the accused has participated in the crime syndicate

with the gang leader or any member of the gang. It is not necessary that there should be more than one charge-sheet against them. It is also submitted that offence under Section 307 is punishable up to life imprisonment and therefore the accused may not be released on bail on the ground that they are incarcerated for prolong period.

6. Without adjudicating on legal submissions above, invocation of provisions of MCOC on single case, it is pertinent to note that both the applicants were arrested on 13.07.2017 and 29.11.2017. The principle offence is under Section 307 of IPC. The applicant Vishal Khedekar was allegedly armed with sickle and the other applicant Sandesh @ Dadya Xaviour Holkar were armed with stick. The incident in question had occurred on 02.07.2017. Apparently, the victim was out of danger and discharged after providing treatment to him. The injury certificate indicate that the victim had suffered injuries on his person and one injury is out of parietal region. The applicants are in custody for period of about five years. The prosecution is relying upon several witnesses. It is not clear as to when the trial would be over. Considering the fact that the applicants are in incarceration for a period of five years and the factual aspects of these matters, case for grant of bail is made out.

7. Hence, I pass the following order:

ORDER

- i. Criminal Bail Application No. 1413 of 2021 & 1879 of 2021 are allowed;
- ii. The applicants are directed to be released on bail in connection with C.R. No.277 of 2017 registered with Dehu Road Police Station, Pune on executing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii. The applicants are permitted to furnish cash bail in the sum of Rs.25,000/- each for a period of eight weeks in lieu of surety.
- iv. The applicants shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- v. The applicants shall not tamper with the evidence.
- vi. Applications stand disposed off accordingly.

(PRAKASH D. NAIK, J.)