

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1923 OF 2021

MALHARI BALASAHEB PALVE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ritesh Thobde, Advocate for the Applicant.

Mrs.PPShinde, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 17th DECEMBER 2021
PRONOUNCED ON : 31st JANUARY 2022**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.656 of 2019 registered with Police Station Tembhurni, for offences punishable under Section 396, 397, 364, 201, 327 and 400 read with 34 of the Indian Penal Code (IPC) and under

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Section 3(1)(i)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act.

2 The case of the prosecution is that informant and one Ahmad Abdulla Shaikh (“deceased” for short) were friends. Since the wife of deceased had died, he was desirous of performing second marriage. Accordingly, informant searched a match for him on You tube application and sent information / bio-data of deceased on the said You tube website. On 4th December 2019 informant received a call from an unknown person in respect of said marriage proposal and that unknown person also said that there is one lady aged 32 years whose husband is dead and she is ready to accept marriage proposal. Even the deceased had a talk with the relatives of the lady.

3 According to the prosecution on 7th December 2019 informant and deceased, as asked by the people from the bride side, reached near Hotel Satyajit. From there they were escorted on two motorcycles by two persons. After travelling for about 15

kms. they stopped the motorcycles in a lonely place in a field of onion crop. The prosecution alleges that thereafter four unknown persons in age group of 25 to 35 came there armed with swords, knife in their hands and started assaulting the informant and the deceased with fists blows and from the handle side of weapons. They even snatched gold chain and gold ring from the person of deceased and removed mobile and cash amount of Rs.3,000/- from informant's pocket. Even they snatched handbag from deceased in which gold ornaments were there. It is further alleged that, at that point of time, two women also came and ran away after taking their bags. As the deceased had sustained injuries, he was rushed to Primary Health Center, Tembhurni where he was declared dead. First Information Report (FIR) accordingly came to be lodged.

4 Mr.Ritesh Thobde, learned counsel for the applicant, submits that the applicant is neither a gang leader nor a member of any organized crime syndicate and therefore, prosecution of the applicant under the provisions of MCOC Act itself is not

maintainable in law. The sanction order issued by the Sanctioning Authority against the present applicant is not proper and within the frame work of Section 23(1) and Section 23(2) of the MCOC Act. According to the learned counsel, cases shown to be pending against the gang leader Raju Sadrya Kale are of individual nature and the present applicant is not co-accused in any of those cases and therefore application of provisions of MCOC Act is unwarranted. The learned counsel then submits that the applicant is in jail since 11th December 2019. He is 19 years old young boy and if is continued to remain behind the bars, his entire career will get spoiled. The applicant is ready to abide by all terms and conditions if so imposed by this Court.

5 Mrs.P.P.Shinde, the learned APP, on the other hand, vehemently opposed the submissions and submitted that the present applicant is duly identified in the Test Identification Parade. During the course of investigation certain recovery has also been made. There is sufficient material on record to establish that the applicant is involved in serious offence and the

provisions of MCOC Act are rightly attracted.

6 Perused the First Information Report and investigation papers as also the Affidavit-in-Reply filed by the Sub-Divisional Police Officer, Akluj Division, Solapur. If the FIR is read carefully, then it would be seen that the allegation of assault and robbery is made against unknown persons without specifying the role of each of them vis-a-vis their physical description. Therefore, at this stage, it cannot be opined about the specific role of the applicant.

7 The only question to be determined is whether the prosecution has been able to satisfy prima facie about the applicability of the provisions of MCOC Act qua the applicant.

8 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 organised crime, it has to be established that the accused is involved in “continuing

1 (2014) 11 Supreme Court Cases 282

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.

9 I have carefully gone through the sanction accorded by Additional Director General of Police (L & O), Mumbai on 5th June 2020. Although at Serial Nos.3 and 4 the name of the present applicant is mentioned, however, at Serial No.5 the Sanctioning Authority has observed that there are more than one charge-sheets against the accused persons namely Raju @ Rajiv

² 2016(4) Bom.C.R. (Cri) 149

³ (2015) 7 Supreme Court Cases 440

@ Gandhi Sadrya Kale, the leader of the alleged syndicate and Kuber @ Kubrya Sadrya Kale for an offence punishable with an imprisonment for a period of more than 3 years, before the competent Courts within the preceding period of 10 years and that the concerned Courts have taken cognizance of such offences. However, no such observation is appearing in respect of the present applicant. Even otherwise, learned APP has not been able to point out during the course of argument as to how the applicant is involved in the organized crime within the meaning of Section 2(e) of the MCOC Act. Merely because the applicant has been identified in the Test Identification Parade it does not mean that he is a part of organized crime syndicate and is actively involved in commission of organized crime. Thus, prima facie, the ingredients of Section 2(1)(d) of the MCOC Act are missing. This being so, by necessary implication, the prosecution has not been able to prima facie establish that the case of applicant falls within the scope of Section 21(4) of the MCOC Act.

10 The next circumstance pressed into service by the learned APP is the recovery of motorcycle at the instance of applicant. Admittedly, there is recovery of the motorcycle used in the commission of offence at the instance of applicant, pursuant to the Disclosure statement given by him under Section 27 of the Indian Evidence Act but that circumstance alone will not prove his major role in the alleged crime. This incriminating circumstance will have to be read along with other evidence which may be adduced at the time of trial by the prosecution.

11 It is also to be noted here that there is no recovery of ornaments which were allegedly robbed at the time of incident, and therefore, this aspect also will have to be kept in mind.

12 For the aforesaid reasons, I am inclined to grant this application. Hence, the following order :

ORDER

(i) The application is allowed.

- (ii) Applicant – Malhari Balasaheb Palve shall be released on bail in Crime No.656 of 2019 registered with Police Station Tembhurni, on her executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (iii) The applicant shall not tamper with prosecution evidence.
- (iv) The applicant shall regularly attend dates fixed by the Court in his case unless exempted in accordance with law.
- (v) The applicant shall co-operate with the Court for expeditious disposal of the case.
- (vi) Bail before trial Court.
- (vii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(viii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(ix) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)