

Versus

Mr. Aabad Ponda, Senior Advocate i/b Harshad Sathe and Saurabh Butala, for the Applicant.

**CORAM : V. G. BISHT, J.**

RESERVED ON : 09<sup>th</sup> December, 2021.

**PRONOUNCED ON : 04<sup>th</sup> January, 2022.**

**PC:-**

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 82 of 2021 registered with Khadak Police Station, District- Pune for the offences punishable under Sections 307, 120B, 143, 147, 148, 149, 506(2) r/w 34 of the Indian Penal Code (IPC), Section 37(1), 135 of Maharashtra Police Act, Section 7 of Criminal Law

Amendment Act, Section 4(25) of Arms Act and Sections 3(1)(ii) 3(2), 3(4) of Maharashtra Control of Organized Crime Act (MCOCA Act).

2 It is the case of prosecution that on 21/02/2021 at about 8-30 p.m. when the informant along with his friend Shubham Maruti More was proceeding to visit his old house at Ganeshpeth Bamboo Ali, Near Maharana Pratap Gym, at that time members of Bandu Andekar gang by name Suraj Ganesh @ Gadiganya Ashok Vaddu, Swaraj Wadekar, Rushabh Andekar, Aditya Ukarande along with 5 to 6 unknown persons came along with weapons in their hands like sickle, palghan etc. The informant and his friend by seeing all the accused started running in order to save their life. The prosecution alleges that, however, all the aforesaid accused assaulted the informant and his friend by fist and kicks. Accused Swaraj Wadekar and Rushabh Andekar tried to assault the informant and his friend by weapon palghan and sickle but they avoided the blows and succeeded in escaping from there. Later on, the informant lodged the report.

3 Mr.Ponda, learned senior Counsel for the applicant, at the very outset submits that the Sanction so granted against gang leader Balu Andekar is apparently bad in law and invited my attention to the investigation papers in order to substantiate his submissions. The sum and substance of learned senior Counsel is that there is defective Sanction which cannot be sustained in law.

4 Coming to the applicant's case, learned senior Counsel submits that neither the applicant is assailant nor was present at the time of alleged incident. According to learned senior Counsel, the applicant, according to prosecution agency, is supposed to be associated with gang leader and accordingly he has been arraigned as an accused. Investigation is completed. Charge-sheet has been filed. Having regard to the fact that there is no complicity of applicant in the alleged offence, he is liable to be released on bail, argued learned senior Counsel.

5 Mr. Dedhia, learned APP, on the other hand, opposed the submissions by contending that the applicant is engaged in gambling business and is closely associated with gang leader Bandu

Andekar. According to learned APP, the present applicant used to finance the said gang leader and then invited my attention to the statement of confidential witness filed at page No. 521 of the compilation. Having regard to the nature of offence, the applicant doesn't deserve to be enlarged on bail, argued learned APP.

6 Perused investigation papers and Affidavit of investigation official.

7 Admittedly, at the time of lodging of report the present applicant was nowhere named by the informant. Even reading of FIR as a whole would not show that the applicant was very much present at the time of incident or he played any role in commission of the principal offence.

8 It appears from the charge-sheet that during the course of investigation it revealed that while the main accused and others were conspiring to do away with the life of informant, the applicant purportedly told them, “तुम्हाला कोर्ट केससाठी मी पैसे पुरवुन सोडवेन” and thus showed his readiness to finance all the accused monetarily.

Thus, it seems that the prosecution wants to show that the applicant was one of the conspirator in the alleged offence.

9 First, coming to the incident, I have gone through the statements of witnesses, namely, Shubham More, Prathamesh Suresh Suryawanshi, Akshay Vitthal Gite, Sanket Ramesh Badirage, Rohit Arun Nagare and Mohasin Rafiq Shaikh. These witnesses nowhere say about the involvement of accused in the incident of assault. Even secret witnesses at page Nos. 521 and 522 whose statements were recorded on 14/03/2021 nowhere indicate the presence of applicant.

10 I have also gone through the statements of Anand Yevalekar and Firdos Nasir Pathan. According to Anand Yevalekar, the applicant is engaged in gambling business and his gambling den is visited by all criminals and gundas. Main accused in the present case Bandu Andekar and his associates give protection to his business. Similar is the statement of Firdos Pathan. Thus, what is clear from the statements of the above-said witnesses is that the applicant is engaged in the business of gambling and is being given

protection by gang leader Bandu Andekar.

**11** I have also gone through the statement of secret witness at page 522. This witness claims to be ex-employee of the applicant and his statement is that in the last week of February, 2021, the applicant told him that he is required to help Bandu Andekar monetarily. Since no other evidence is forthcoming, the statement of this witness will have to be tested at the time of trial by the trial Court. As far as the alleged conspiracy is concerned, as is claimed by the prosecution, the present applicant is named in the charge-sheet. However, it is not made clear as to what is the source of the said conclusion of the criminal conspiracy between the applicant and the gang leader Bandu Andekar.

**12** As far as the aspect of Sanction as against the gang leader Bandu Andekar is concerned, that is given at page No. 324 of the compilation. It appears that there were two Crime Nos. viz. 54 of 2010, under Sections 307, 343, 147, 148, 149 of IPC and Section 3 (25) of Arms Act and Crime No. 1470 of 2020 under Sections 420, 465, 466, 467, 468, 471, 34 of the IPC. Out of these two Crime

numbers the said gang leader is acquitted in Crime No. 54 of 2010. Remaining Crime No. i.e. 1470 of 2020 appears to be under investigation and thus no charge-sheet has been filed. On the face of it, the Sanction appears to be defective inasmuch as while the reply of the Investigation Official shows that Crime No. 26 of 2021 registered with Vishrambaug Police Station, Pune, under Sections 307 etc. of IPC was also taken into consideration but the Sanction does not show so.

**13 In Ranjitsingh Bramhajeetsingh Sharma Vs. State of Maharashtra and Anr.** <sup>1</sup> the Hon'ble Apex Court made following observations at para 44.

“ The wording of [Section 21\(4\)](#), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature.

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<sup>1</sup> (2005)5 SCC 299

Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.”

**14** From the above, it is clear that the applicant is allegedly involved in the illegal activities of gambling. It is also not the case of prosecution that the present applicant is an accused along with gang leader in another crimes. Investigation is completed and charge-sheet has been filed.

**15** Having regard to the material on record, in my opinion, the

applicant has made out a case for grant of bail. Hence, the following order.

**ORDER**

(i) Applicant- Nandkumar Baburao Naik shall be released on bail in C.R. No. 82 of 2021 registered with Khadak 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) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA  
PRAKASH  
PATIL

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Rekha Patil

(V. G. BISHT, J.)

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