IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3781 / 2021

Sanjay Ajyuday Sharma … **Applicant**

Versus

The State of Maharashtra … **Respondent**

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Mr. Ravindra S. Pachundkar, Advocate for the Applicant.
Mr. Ameet Palkar, APP for State.

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CORAM : SANDEEP K. SHINDE, J.

DATE : 12th JANUARY, 2022.

[Through Video Conference]

P.C.

1. Applicant is seeking his release on bail in Crime No. 189/2017 registered with Vadgaon Maval Police Station, Pune under Section 399, 402, 332 read with 34 of the Indian Penal Code and under Section 4 read with 27 of the Indian Arms Act.

2. Prosecution case in brief is that on 4th November, 2017, Informant - Police Naik attached to Vadgaon Maval Police Station, received information, that four to five suspects moving in area near Hanuman Temple, were preparing or likely

to commit dacoity. Whereafter Informant with Police Officials reached the spot. Five persons were found loitering near Hanuman Temple. Noticing the Police Officials suspects tried to run away; however two were nabbed, one Vikas @ Vicky Ankush Bhise (Gang Leader) and Sanjay Sharma (Present Applicant). They disclosed the names of other three persons, who had run away. Afterwhich, crime was registered on 29th November, 2017. Pending investigation, prior approval under Sections 23(1) (a) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC for short) was granted and Section 3(1)(ii), 3(4) of the MCOC Act, were applied to the present case. On 2nd May, 2018, Additional Director General of Police (L and O) accorded sanction under Section 23(2) of the MCOC Act. After completing the investigation, the charge-sheet has been filed against the Applicant in Special Case No. 21/2018. On 12th March, 2020, the bail application of the Applicant, was disposed of as withdrawn and the trial in the Sessions Case No. 21/2018 was expedited.

3. Mr. Pachundkar, learned Counsel for the Applicant submitted that Applicant has been falsely implicated in the case. He is 22 year old. He is in custody since 4th November, 2017. Although the charge has been framed, the trial is not

likely to conclude in the near future. He submitted that co-accused have been granted bail either by the trial Court or by this Court. He has relied on the bail order dated 2nd February, 2020, by which Vikas @ Vicky Ankush Bhise (Gang Leader) has been released on bail. Mr. Pachundkar, further submitted that the MCOCA has been incorrectly applied, in as much as the Prosecutions' affidavit does not imply or point to that the past two offences in support of which charge-sheets were filed, were committed by the Applicant as a Member of Organised Crime. Mr. Pachundkar further submitted that Applicant is a permanent resident of Village Akardi and his presence for the trial can be secured by imposing the suitable conditions. His next submission is that Applicant is in custody since November, 2017. On these grounds, Applicant's bail is sought.

4. Per-contra Mr. Ameet Palkar, learned APP would contend that the offences under MCOCA are applied and therefore there is a bar under Section 21(4) of the MCOC Act in granting bail to the Applicant. Learned APP would rely on the affidavit of Mr. Rajendra Patil, SDO, Lonawala Division, Pune to oppose the application. He relied on the crime chart of the Applicant and of Gang Leader - Vikas @ Vicky Ankush Bhise, to contend

that the Applicant being habitual offender, if released, he may commit and continue to indulge in to unlawful activities of crime syndicate.

5. I have considered the submission of the Counsel for the parties. It may be stated although five offences are at the discredit of the Applicant, those offences do not look to the common to those under MCOC Act. It may be stated that mere number of filing of charge-sheet in past, is not enough. It is only one of the requisite for constituting Organised Crime. It has been observed by this Court in the case of **Prafulla s/o Uddhav Shende Vs. State of Maharashtra** (2009) ALL MR Criminal 870, thus;

"that if only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of Article 20(1) of the Constitution and possibly Article 20(2) as well. Here the prosecution has just relied on the previous offences at the discredit of the applicant and nothing more. To constitute continuing unlawful activity following are requirements of law:

"i. more than one charge-sheet, alleging commission of cognizable offence punishable with imprisonment of three years or more;
ii. a charge-sheet should consist of averments, alleging unlawful activity undertaken either singly or

jointly by the accused;
iii. As a member of organized crime syndicate or on behalf of such syndicate;
iv. the cognizance of such offence is taken by the competent court."

Thus, in order to bring an alleged act within the ambit of MCOC Act, the above mentioned requirements are mandatory. Therefore, word "in respect of which" in definition of clause of "continuing unlawful activity" indicates that it is not a normal charge-sheet, alleging commission of cognizable offence but requirement is that alleged acts is undertaken either singly or jointly by the accused, who is member of organised crimes syndicate or is undertaken on behalf of such syndicate. In the case in hand, no efforts were made by the prosecution to show that past two offences in respect of which charge-sheets were filed, were committed by the applicant as member of organised crime syndicate, i.e, acting as syndicate or a gang or on behalf of such syndicate."

6. The affidavit in reply filed by the State, does not point to the nexus between the unlawful activity alleged in previous crime with the present crime to which MCOCA has been applied. Additionally it may also noted that one of the two persons, who were held on the spot has been granted bail by this Court. Moreover a Gang Leader, has also been released on bail by the trial Court.

7. The final report reveals the witnesses cited by the Prosecution are Police Officials except one. Though the Applicant was apprehended on the spot, no incriminating material has been recovered or found with him. It appears from the affidavit that Prosecution is opposing the application on the ground that Applicant being habitual offender shall indulge in the similar acts. In that view of the matter, the rigorous of Section 21(4) of the MCOC Act, may not apply to the facts of the case. That for the aforesaid reasons, the Applicant is directed to be released on bail on executing PR bond for the sum of Rs. 50,000/- with one or more sureties in like amount.

8. The Applicant shall report to the concerned Police Station between 11:00 am. to 01:00 pm., twice a month i.e. 1st and 3rd Monday in a week commencing from February, 2022, till the conclusion of the trial.

9. Application is allowed and disposed of in the aforesaid terms.

10. It is made clear that observations made hereinabove shall

be construed as an expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

MOHAMMAD NAJEEB MOHAMMAD QAYYUM

Digitally signed by MOHAMMAD NAJEEB MOHAMMAD QAYYUM
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