

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2758 OF 2022

Santosh Narayan Shetty	...Applicant
Versus	
State Of Maharashtra	...Respondent

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Mr. S. T. Pandey, Arvind Singh, Angela singha, Anima Mishra,
Kajal Upadhyay, Anu Singh, Advocate for the Applicant.

Mr. N. B. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th OCTOBER, 2022

PER COURT:

1. This is an application pre-arrest bail in connection with C.R. No. I-19 of 2015 registered with Vadivarhe Police Station, Nashik for offences punishable under Sections 119, 120-B, 177, 201, 414, 465, 468, 471 of the Indian Penal Code and Sections 3(1),(ii), 3(4), 3(5), 4, 24 of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA') and Sections 3 and 7 of Essential Commodities Act.
2. The FIR was registered on 01.06.2015. The investigation is completed and charge-sheet is filed against the other accused. The case of the prosecution is that the accused are committing the activities for economics gain by

indulging in unlawful activities. The FIR also refers to the interception of vehicles carrying rice.

3. Learned advocate for the applicant submitted that there is no evidence against the applicant in the present case and is entitled to be released on bail in accordance with Section 438 of Cr.P.C.

4. It is submitted that although there is bar entertaining application under Section 438 of Cr.P.C. in accordance with Section 21(3) of MCOC Act, this application could be entertained since there is no involvement of the applicant in the crime. He relied upon the decision of Division Bench of this Court in the case of of **Shabana Parveen Inayatullah Shaikh Vs. The State of Maharashtra** in Writ Petition No. 1959 of 2021 on 13.08.2021 and adverted to the observation made in paragraph No.19 of the said decision. \ It is submitted that the said petition was partly allowed and pre-arrest bail was granted to the petitioner therein. It is also submitted that in paragraph No. 16 the Division Bench has made reference to decision of Apex Court in the case of **State of Maharashtra Vs. Lalit Somdatta Nagpal**¹ wherein it was emphasised about the necessity of strict interpretation of the provisions of MCOC Act in view of the

¹ (2007) 4 SCC 171

stringent nature thereof. It was observed that as the provisions of MCOC Act seeks to deprive a citizen of his right to freedom at the very initial stage of the investigation and make it extremely difficult for him to obtain bail, it is necessary to examine whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.

5. Learned APP submitted that the application is not maintainable in law. Section 21(3) of excludes exercise of powers under section 438 of Cr.P.C. The Division Bench was exercising the power under article 226 of the Constitution of India and one of the prayer in the said petition was to set aside the sanction order.

6. The object of MCOC Act is to prevent and control criminal Activity by organised crime syndicates or gangs and for matters connected therewith or incidental thereto. The legislature fact that it was expedient to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang and for matters connected thereto and incidental thereto.

7. Section 21(3) of the MCOC Act reads as follows:-

“21(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed

an offence punishable under this Act.”

Apparently, the legislature has taken note of objects of the Act and the incorporated Section 21(3) excluding applicability of section 438 of Cr.P.C.

8. Section 21(4) of MCOC Act imposes restricts on grant of bail. It is evident that considering embargo for grant of bail where MCOC is applied, the Act has made provision for excluding powers under Section 438 of Cr.P.C. The application under Section 438 of Cr.P.C. cannot be entertained. This Court cannot examine the merits of the case. The Division Bench in the decision relied upon by applicant had exercised the power under article 226 of the Constitution of India. In the said petition sanction was also under challenge. Hence this application is not maintainable in law.

ORDER

(i) Anticipatory Bail Application No. 2758 of 2022 stands rejected and disposed off.

(PRAKASH D. NAIK, J.)