

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 695 OF 2022

Ashutosh s/o Pramod Awashti .Vs. State of Maharashtra, thr. P.S.O., P.S. Nandanwan, Nagpur Tq. & Dist. Nagpur.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anil S. Mardikar, Senior Advocate with Shri V.R. Deshpande, Advocate
for the applicant.

Shri S.D.Sirpurkar, A.P.P. for the non-applicant /State.

CORAM : ANIL S. KILOR, J.
DATED : 29/11/2022

1. Heard.
2. The applicant is seeking anticipatory bail in connection with Crime No. 51/2022 registered with Police Station Nandanwan, District Nagpur for the offences punishable under Sections 120-B, 294, 364-A, 420 and 506 of the Indian Penal Code, Sections 3 and 25 of the Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
3. In this case, the facts of the case are that the co-accused Pramod Awasthi-father of the applicant was contacted by the complainant for arranging hand loan of Rs. 2 Crores for his garment business, which he assured to arrange at 10% interest. The complainant has given total amount of Rs. 41,00,000/- to co-accused Pramod Awasthi in the trenches of Rs. 20,00,000/- and Rs. 21,00,000/-. The co-accused failed to arrange the amount as agreed and the

complainant was threatened to the applicant and others and therefore, he lodged the complaint against the applicant and others.

4. If the role of the applicant is considered, the allegations are that by pointing out the gun, he threatened the informant that he shall not ask for refund of amount to him. Interestingly, the said incident is of August 2019, whereas, the complaint was lodged on 09/02/2022 and in between the informant and the main accused were arrested in Crime No. 473/2020 registered with Police Station Ajni.

5. In the present case, the application for grant of bail of the main accused and his wife Padma Awasthi was allowed by the trial Court. On delay, the findings recorded by the learned trial Court are relevant and has read thus:

“6. The applicant and the informant were accused in Crime No.473/2020 registered with Ajni Police Station and were arrested. The informant did not disclose about the above said transaction. Thus, prima facie there is serious doubt about the the claim made by the informant. No doubt, this is not the stage to suspect the contention of the informant, but when the informant was threatened and refusal from the applicant to make the payment and his inaction for considerable period of three years is required to be sufficiently explained. On the contrary, the reply (Exh.5) suggests that the purpose for which the amount was given by the informant to the applicant, was utilized by him for the same purpose. Therefore, the story putforth by the prosecution, at this juncture, is not free from doubt.”

6. Thus, in view of the above referred observation, it can be said that an explanation offered by the informant in the FIR is prima-facie not satisfactory and the whole story is also appears to be improbable for the simple reason that it has come in the FIR that the main accused was in need of money and he was demanding amount from the informant. Therefore, it is improbable that a person who himself is in need of money, the applicant was expecting from him that he will pay hand loan of Rs. 2 Crores, and paying huge amount in advance towards interest for the same.

7. Similarly, the learned trial Court in para-8 has made certain observations about the invocation of the provisions of MCOC, which read thus:-

“8. Now, turning to the aspect of applicability of the MCOC Act. The approval order is too vague and it does not disclose as to how the authority came to the conclusion that the provisions of the MCOC Act are required to be invoked in this case. Mere statement that there are more than one chargesheets filed against the gang, in which offences are having punishment of 3 years or more and the cognizance has been taken by the competent Courts, will not suffice the purpose. It seems that the applicant is shown as the gang leader. It is a sorry state of affair that the offences, which have been taken into consideration against the applicant the gang leader, in none of those offences charge-sheet has been filed and the cognizance has been taken by the Court prior to the registration of the present offence. Then, as to how the authority came to the conclusion that the applicant formed a crime syndicate and the other accused are its members. The approval should not be mere empty formality. There is nothing in the

approval order to suggest that the authority has applied its mind to come to the conclusion that the applicant is a member of organized crime syndicate and therefore, provisions of MCOC Act are required to be invoked in the present case. No doubt, the chart shows two bodily offences against the co-accused Ashutosh, but in none of these offences, the other accused are involved. This Court is aware of the fact that this Court is not seating in appellate jurisdiction to test the order of the competent authority approving the invocation of the provisions of MCOC Act. But, this Court is well within the jurisdiction to critically examine the order of approval for considering the question of the liberty of the applicant. Thus, from the above discussion, it is clear that the rigor of Section 21(4) of the MCOC Act will not be an impediment for deciding the present application”.

8. From the above referred observations, I am of the opinion that, the said finding would also squarely applicable to the case of the applicant.

9. In the circumstances, as *prima-facie* there is nothing to show that the applicant is involved in the alleged offence, there is reasonable ground to believe that the applicant is not involved in the alleged offence.

10. In view of the fact that, *prima-facie* there is nothing to point out that the applicant is the member of the syndicate, the bail cannot be denied to the applicant, only on the ground that the provisions of MCOC have been invoked, accordingly I pass the following order:

a) The criminal application is **allowed**.

- b) The order granting *ad interim* anticipatory bail dated 30/09/2022, is hereby confirmed.
- c) The applicant shall attend the concerned Police Station as and when his presence is required.

JUDGE