

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.1349 OF 2021

Nikhil @ Tikka S/o.Raju Tidke,
aged 32 years, Occ. : Labour,
R/o. Plot No.13, Near Sant Sawta
School, Shrikrushna Nagar,
Near Suvidha Layout, Ayodhya
Nagar, Nagpur.

.... **APPLICANT.**

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Hudkeshwar Police Station,
Tah. & Dist. Nagpur.

.... **NON-APPLICANT.**

Shri S.P.Bhandarkar Adv.a/w.Shri Ganesh Mate, Adv for Applicant.
Shri V.A.Thakre, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : JULY 11, 2022.

ORAL ORDER:

1. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in connection with Crime No.295 of 2017, registered with Police Station, Hudkeshwar, Nagpur for the offences punishable under Sections 365, 302, 201, 120-B, 212 read with Section 34 of the Indian Penal Code, 1860, Section 4 and 25 of the Arms Act, 1959, Sections 3(1)(i), (ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as “MCOC Act”)

2. It is the case of the prosecution that the first informant Devidas Mohod received a phone call of one Rupesh Bonde that he along with Vijay Mohod (deceased) and Hansraj Vaidya had gone together, thereupon some unknown persons came there and took Vijay with them in their four wheeler. The informant therefore, lodged a report about kidnapping of Vijay Mohod by some unknown persons. Accordingly, crime for the offence punishable under Section 365 of IPC came to be registered on 16/06/2019.

3. Thereafter, on 17/06/2019 the body of Vijay Mohod was found near outer ring road of village Vela Harischandra. Accordingly, offence under Section 302 of the Indian Penal Code came to be added.

4. During the investigation, it was revealed that accused persons hatched a conspiracy and committed murder of Vijay Mohod, hence, Section 120-B of IPC, was added.

5. It was also revealed that the murder was committed by orgnized crime syndicate headed by co-accused Abhay Raut, the accused No.1, hence, later on provisions of MCOC Act came to be invoked.

6. I have heard the learned counsel for the applicant and the learned A.P.P. for the non-applicant/ State.

7. Shri Bhandarkar, learned counsel for the applicant submits that there is no convincing material to show the involvement of the applicant. It is submitted that the name of the present applicant does not appear in the First Information Report. He thus submits that the applicant has been falsely implicated in the alleged offence. He further submits that unless the prosecution shows that the applicant is the member of the alleged syndicate, the provisions of MCOC Act cannot be invoked against the applicant.

8. He further submits that as far as antecedents are concerned the applicant was acquitted in Crime No. 293 of 2011 for the offences under Section 294, 448, 323, 506B read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Prevention of Defacement of Property Act, 1997 and Section 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act and Section 7 of the Criminal Law (Amendment) Act.

9. He further points out that the second crime registered against the applicant vide Crime No. 3435 of 2012, registered at Hudkeshwar Police Station, it was under Sections 4 and 5 of the Maharashtra Prevention of Gambling Act, 1887. Thus, he submits that there is no commonness or commonality in the offence despite the said fact the provisions of MCOC Act have been invoked against the applicant.

10. He further points out that after completion of investigation the charge-sheet has been filed and as such the custody of the applicant is no more required.

11. In support of his submissions, the learned counsel for the applicant has placed reliance on the following judgments:

- i) **(2011) SCC Online Bom. 605** (*State of Maharashtra ..vs.. Rahul Ramchandra Taru*)
- ii) **(2007)1 SCC 242** (*Chenna Boyanna Krishna Yadav ..vs. State of Maharashtra*)
- iii) **2015 SCC Online Bom.6038** (*Mangesh Manik Kanchan ..vs.. State of Maharashtra*)

- iv) **(2019) SCC Online Bom. 7084** (*Aakash Dipak Lokhande ..vs.. State of Maharashtra*)
- v) **(2019) SCC Online Bom. 4359** (*Amar Bharat Kale ..vs.. State of Maharashtra*)
- vi) **2016 SCC Online Bom. 5330** (*Bhupendra @ Golu Suryakant Borkar .vs.. State of Maharashtra*)
- vii) **2011(5) Mh.L.J. 386** (*State of Mah...vs.. Jagan*)

12. On the other hand the learned A.P.P. strongly opposed the application. He submits that the applicant never raised any challenge to the sanction granted for invocation of the provisions of MCOC Act against the applicant. Thus, he submits that in this case, while considering the prayer of the applicant for grant of bail, this Court cannot go into the issue of validity of sanction.

13. The learned A.P.P. further points out that the knife used in the present crime came to be discovered under Section 27 of the Indian Evidence Act, at the instance of the present applicant, who stabbed the deceased by the aforesaid knife.

14. It is submitted that during the investigation, the investigating agency also seized the CCTV footage from Amit Saoji Bhojanalaya and other CCTV footages of the nearby vicinity, which sufficiently shows involvement of the applicant in the present crime.

15. It is pointed out that the present applicant was party to the conspiracy hatched to eliminate the deceased. He further submits that the applicant is the active member of the organized crime syndicate headed by the gang of Abhay Raut.

16. The learned A.P.P. points out that during investigation Test Identification (T.I.) Parade was conducted in which Hide witnesses 41, 42, 43 identified the present applicant who was the part and parcel of the conspiracy and active member of the crime syndicate. It is pointed out that there are statements of hide witnesses under Section 164 of the Code of Criminal Procedure.

17. The learned A.P.P. further draws attention of this Court to the confessional statement of co-accused Suraj Gangadhar Karlewar, wherein he has stated the complete incident including the role of the applicant in the present crime.

18. It is further pointed out that another confessional statement was recorded of Rahul Rajendra Thakre. He therefore, submits that as the confessional statements are admissible under Section 18 of the MCOC Act, there is sufficient incriminating material available against the applicant to show that the applicant is involved in the alleged offence.

19. In reply the learned counsel for the applicant Shri Bhandarkar submits that the said confessional statement cannot be relied upon it has been retracted.

20. The learned A.P.P. further points out that considering the antecedents of the applicant and involvement of the applicant in

other offences, there is every likelihood that if he is released on bail he may commit the similar offence.

21. In support of his submission the learned A.P.P. has relied on the following judgments :

- a) **2017(3) Mh.L.J. (Cri.) 585** (*Raju Vitthalrao Bhadre ..vs.. State of Maharashtra & Another.*)
- b) **2014 ALL MR (Cri) 2927** (*Praveen Venkatesh Takalki Vs. National Investigation Agency*)
- c) **(2012) 10 SCC 561** (*State of Maharashtra ..vs.. Vishwanath Maranna Shetty*)
- d) **AIR 2021 SC 2011** (*Ramesh Bhavan Rathod .vs. Vishanbhai Hirabhai Makwana (Koli)*)

22. In the above referred backdrop of submissions of the learned counsel for the applicant and the learned A.P.P. I have perused the chargesheet, application, reply of the State and the relevant provisions of the MCOC Act.

23. In this case, co-accused Suraj Karlewar and Rahul Rajendra Thakre have given confessional statements before the

Police under Section 18 of the MCOC Act. The confessional statement under Section 18 of the MCOC Act is admissible as evidence.

24. The Indian Evidence Act makes no distinction between a retracted and unretracted confession. Thus, at this stage, while considering the bail application of the applicant, it cannot be said that the confessional statement given by two co-accused persons in this case, under Section 18 of the MCOC Act is not admissible.

25. From the confessional statements it can be seen that there was an enmity between the gangs of deceased Vijay Mohod and Abhay Raut on account of Gambling Dens. It has further come in the statement that on the day of incident, vehicle of Abhay Raut was stopped by Vijay Mohod and therefore, the gang leader Abhay Raut had called his other associates including the present applicant. Thereafter, they all went to the Babbi Bar and Restaurant and consumed liquor. The gang leader Abhay Raut asked Rs.10,000/- to co-accused Rahul Thakare and Rahul Thakare gave said amount

by borrowing it from other friend. When Rahul Thakare was about to leave the Bar, the co-accused Bobby Dhote and Pritam Kapse came there and Bobby Dhote told everyone that, they have to speak to Vijay Mohod about settling the quarrel which had ensued in the morning. The co-accused Rahul Thakare went in the vehicle of Pritam Kapse towards Amit Saoji Bhojnalaya and was waiting outside. After some time gang leader Abhay Raut along with the present applicant and co-accused took Vijay Mohod in their Verna Car. Thereafter, the witnesses and the present applicant went to the house of one witness where Pritam Kapse received a phone call from Abhay Raut calling him at Gonthade bye-pass. At that time, Pritam Kapse, co-accused Rahul Thakare and other witnesses went towards Gondhade by taking car of Nilesh bearing No. MH-49-AE-3944. After meeting Abhay Raut gang leader gave his Verna Car and he sat in the vehicle which was brought by Pritam Kapse. It is further stated in the statement of Suraj Kalrewar under Section 18 that, the applicant Nikhil, co-accused Abhay Raut along with Vijay Mohod were proceeding in the Verna Car, the quarrel took

place in the car between Abhay Raut and Vijay Mohod thereby Abhay Raut caught hold the neck of Vijay Mohod and the present applicant Nikhil assaulted Vijay Mohod by means of knife thereafter Abhay Raut, the gang leader also assaulted Vijay Mohod by means of knife and they threw the body of Vijay Mohod at lonely/ seclude place.

26. From the said statement it is crystal clear that the present applicant along with gang leader Abhay Raut has assaulted the deceased Vijay Mohod by means of knife. It is also clear from both the confessional statements that the gang leader Abhay Raut hatched the conspiracy along with other accused prsons and decided to eliminate Vijay Mohod. On that day Suraj Karlewar was driving the Verna Car in which the deceased was taken along with present applicant and Abhay Raut.

27. Thus, the participation of the present applicant not only while hatching the conspiracy but also in execution is *prima-facie* clear.

28. The present applicant has assaulted the deceased Vijay Mohod by knife which came to be recovered from him under Section 27 of the Evidence Act. The opinion of the doctor regarding query of knife is in affirmative.

29. Thus, at this stage prima-facie there is sufficient incriminating material against the applicant to show that he is involved in the alleged offence.

30. In this case, though it was argued that the provisions of MCOC Act cannot be invoked against the applicant, however, nothing has been pointed out that the order granting sanction to invoke provisions of MCOC Act against the applicant was challenged by the applicant. In absence of any such challenge, and considering the confessional statements of the co-accused coupled with statements under Section 164 of the Code of Criminal Procedure of the hide witnesses, 37, 38 39 and 40, prima facie it can be said that the applicant is the member of crime syndicate and has actively participated in commission of the alleged crime.

31. Furthermore, during the investigation, T.I. parade was conducted in which the hide witnesses 41, 42, 43 identified the present applicant.

32. Thus, there is cogent and ample *prima-facie* material available on record to show that the applicant had actively participate in hatching the conspiracy and he is the active member of the gang of Abhay Raut and there was enmity between gangs of Abhay Raut and Vijay Mohod on account of Gambling Dens.

33. Further, the applicant has committed four crimes in previous 10 years, thus there are antecedents against the applicant. As far as the submission of the applicant is considered that there is no commonality in those offences, even if it is accepted and the antecedents are not taken into consideration, still the involvement of the applicant in the present offence is *prima-facie* apparent.

34. In the above referred backdrop, there is a sufficient material to reasonably believe that the applicant is guilty of the

alleged offence and as the twin condition under Section 21(4) of the MCOCA Act will apply to this case, I am of the opinion that the applicant is not entitled for grant of bail in the light of above referred observations made herein above. Accordingly I pass the following order:

The Criminal Application is **rejected**.

(ANIL S. KILOR, J)

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