

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

CRIMINAL APPLICATION (BA) NO.1361 OF 2021

(ADARSH ANIL KHARE...VS.. STATE OF MAH. THR.PSO, PS, SITABULDI, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S.Jaiswal, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant /State.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 17, 2022.

1. Heard.
2. This is an application under Section 439 of the Code of Criminal Procedure for grant of regular bail in connection with Crime No.397 of 2020, registered with Police Station, Sitabuldi, Nagpur for the offences punishable under Sections 143, 144, 147, 148, 149, 302, 341, 120-B, 201 and 212 of the Indian Penal Code, Section 3/25 and 4/25 of the Indian Arms Act and Section 135 of the Bombay Police Act and Section 3 of the Maharashtra Control of Organised Crimes Act, 1999 (hereinafter referred to as "MCOCA Act")
3. The learned counsel for the applicant submits that except allegation that the accused has purchased weapon in the name of the present applicant there is nothing to show his involvement in the alleged offence.
4. He further submits that after completion of the investigation charge-sheet has been filed, as such the custody of the applicant is no more required. He further

submits that except this offence there is no offence against the applicant and therefore, the provisions of MCOC Act do not apply to the present applicant. He, accordingly prays for grant of bail.

5. The learned counsel for the applicant placed reliance upon the following judgments/orders of this Court to fortify his submission that because there is only one offence against the applicant the provisions of MCOC Act will not apply to the case of the applicant :

- i) *Suresh Baban Pawar ..vs.. State of Maharashtra*¹;
- ii) *Anil Bhaiyaji Raut Vs. State of Maharashtra*²;
- iii) *Maruti Navnath Sonawane ..vs.. State of Maharashtra*³,
- iv) *Dinesh Bhondulal Bisware vs.. State of Maharashtra*⁴;
- v) *Anil Babu Mane..vs.. The State of Maharashtra*⁵,
- vi) *Dikshant Dhanraj Patil ..vs.. State of Maharashtra*⁶;
- vii) *Vimleshkumar Siddhagpal Shukla..vs.State of Mah.*⁷;
- viii) *Gurmeet Singh @ Babu Khokar .vs.. State of Mah.*⁸;

6. The learned A.P.P. strongly opposed the application and submits that the offence is very serious and *prima-facie* involvement of the applicant is clear from the record. The learned A.P.P. further submits that the submission of the applicant cannot be accepted that as this is the only offence against the applicant the provisions of

1 2020 SCC OnLine Bom 3588
 2 2006 ALL MR (Cri.) 984
 3 2022 SCC OnLine Bom 955
 4 2016 ALL MR (Cri) 3517
 5 Cri.Bail Appln.No.1387/2016(Bombay)
 6 Cri.Appeal No.244/2021(Nagpur-DB)
 7 Cri.Application(BA) No.1160/2021
 8 Cri.Application(BA) No.411/2020

the MCOC Act will not be applied to the applicant. He submits that the requirement is not *qua* the individual, but it is *qua* the syndicate. Accordingly, he submits that in view of the fact that there is *prima-facie* sufficient material against the applicant this Court may not consider the request of the applicant for grant of bail.

7. I have perused the charge-sheet and the reply filed by the State.

8. From the charge-sheet it can be seen that there is material available which *prima-facie* shows involvement of the applicant in the alleged offence. As far as provisions of the MCOC Act is concerned, it is matter of trial. In the light of *prima-facie*, incriminating material available on record, there is no reasonable ground to believe that the applicant is not guilty.

9. As the offence is very serious and because there is *prima-facie* incriminating material against the applicant to show that he is the member of the syndicate and he is involved in the alleged offence, I am not inclined to grant bail. Accordingly, I pass the following order:

The Criminal Application is **rejected**.

JUDGE