

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1121 OF 2023

Sandip Dilip Kadam .. Applicant

Versus

The State of Maharashtra .. Respondent.

Mr. S.E. Shekade, Advocate for the applicant,
Mr. S.B. Narwade, APP for State.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 16th October, 2023
PRONOUNCED ON : 25th October, 2023.**

ORDER :-

The applicant seeks regular bail in connection with Crime No. 139 of 2021 registered with MIDC police station, Ahmednagar for the offences punishable under Sections 392, 397, 323, 504, 506 read with 120-B and 34 of IPC and sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA).

2. The investigation progressed on the basis of complaint given by Dnyaneshwar Gajre alleging that on 4.3.2021, he was driving the truck from Baramati to Orissa alongwith his companion. It appears that at about 4.30 a.m. he reached in the vicinity of village Shendi on Nagar Aurangabad Highway. He was to park the truck for the purpose of urination, therefore, the truck was taken on the side of the road. At the same time three persons arrived on a motorcycle and two of them suddenly entered into the cabin of truck with deadly weapons like knife,

sickle in their hand and robbed the informant. Cash amount of Rs. 4,000/-, mobile phones worth Rs. 42,000/- were snatched by the accused persons. Then they dispersed on their motorcycle.

3. In pursuance of the aforesaid complaint, initially offences under Sections 392, 397, 323, 504, 506 read with 120-B and 34 of the Indian Penal Code were incorporated in Crime No. 139 of 2021. The applicant was arrested in pursuance of the aforesaid crime on 5.3.2021 and vide order dated 6.4.2021, he was enlarged on bail. It appears that during the course of investigation, noticing that applicant was repeatedly involved in similar offences, a proposal for invoking the offences under the Maharashtra Control of Organized Crimes Act, was moved. Accordingly, by order dated 14.5.2021, permission was granted for invoking the offences under sections 3(1)(i)(ii), 3(2), 3(4) of the MCOC Act. Finally, by order dated 27.7.2022, the Additional Director General of Police, Maharashtra State, accorded sanction for prosecution of the accused persons before Special Court constituted under the MCOC Act.

4. In view of this development, the prosecution moved an application under Section 439(2) of the Cr.P.C. seeking cancellation of bail granted to applicant by the Sessions Court. Upon service of notice to the accused, the matter was heard. The learned Sessions Judge, Ahmednagar vide order dated 25.8.2022 allowed the Misc Application No. 86 of 2022 and cancelled the bail.

5. The applicant was produced before the Special Court in view of the addition of MCOC Act and since then he is in MCR w.e.f. 31st August, 2022.

6. The applicant again moved bail application below Exh.6 in Special Case (MCOCA) No. 151 of 2022. However, the Special Judge rejected his prayer vide order dated 30th May, 2023.

7. The learned advocate for the applicant would submit that the applicant was already released on bail in present case. However, after invocation of the provisions of the MCOC Act, his bail has been cancelled and applicant was again arrested and produced before the Special Court. Since then he is behind bars. The learned counsel for the applicant would submit that the MCOC Act would not apply in facts of the present case. The applicant has not played any role in commission of the offence. There is no recovery from the applicant. He would further submit that although 7 offences are registered against the applicant, only 4 offences are pending trial. In Crime No. 59 of 2016 he is already acquitted. In Crime No. 360 of 2020 registered with Tofkhana police station, only his motor cycle is shown to have been used in commission of the offence. The applicant is not part of organized criminal activity. Prima facie, there is no material to justify invocation of MCOC Act. He would further submit that in present case, applicant was behind bars from his initial date of arrest till 6.4.2021 and thereafter, he is again taken in custody on 31st August, 2022. As such, he has suffered incarceration for more than 15 months in connection with the present crime.

8. The learned APP strongly opposes the prayer for grant of bail stating that the applicant is a hardened criminal. After following due process of law, MCOC Act has been invoked. The competent authority has sanctioned the proposal on the basis of relevant material and therefore,

he opposes the release of the applicant on bail.

9. Having considered the submissions advanced, apparently, the applicant was arrested in subject crime on 5.3.2021. Thereafter, he was released on bail by order of the Sessions Court on 6.4.2021. After invocation of the MCOC Act, the bail granted in favour of the applicant is cancelled and he is re-arrested on 31st August, 2022.

10. Perusal of the documentary evidence on record shows that the applicant is re-arrested after cancellation of bail on account of invocation of MCOC Act, 1999 when vide order dated 27.7.2022, the proposal under Section 23(2) of the MCOC Act 1999 was sanctioned by the Director General of Police Maharashtra State, Mumbai. Perusal of the order passed by the competent authority shows that there is no specific reference of the crimes registered against the applicant and even reasoning in support of conclusion that the applicant is involved in organized crime is missing. The police papers show that 7 offences are registered against the applicant, however, details are not placed before this court to make out a case that such offences were committed by applicant as member of the syndicate. Prima facie, the material relied by the prosecution is bereft to satisfy the requirement of invoking the MCOC Act.

11. So far as the merit of the present case is concerned, the evidence in form of CDR and tower location, recovery of sickle and the motorcycle under Section 27 of the Evidence Act is relied. However, memorandum panchanama shows that only sickle is recovered at the instance of applicant and motor cycle is recovered under Section 65(B) of

the Act.

12. Although there is some material on record regarding criminal antecedents of the applicant so also to depict his involvement in the present case, looking to the nature of allegations further detention of the applicant would not necessary. The applicant is behind bars for more than 15 months. Pertinently, the victims are not shown to have suffered any injury in the offence. Except snatching of mobile phones and cash amount, there are no further allegations. Further trial is at preliminary stage and likely to take much time. Hence, a case is made out for grant of bail.

13. **ORDER**

(i) The application is allowed.

(ii) Applicant – Sandip Dilip Kadam be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand) with one solvent surety of the like amount, in connection with Crime No. 139 of 2021 registered with Police Station MIDC Police Station, Ahmednagar, for the offences punishable under Sections 392, 397, 323, 504, 506 read with 120-B and 34 of IPC and sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA), on the following conditions :-

- (a) He shall not make attempt to contact any witness in the charge sheet and shall not tamper with the prosecution evidence.
- (b) He shall attend the trial on each and every effective date.
- (c) He shall visit MIDC Police Station, Ahmednagar once on 17th

of every Month between 10.00 a.m. and 2.00 p.m. till conclusion of trial.

(d) He shall furnish his residential address alongwith contact numbers with the concerned police station and continue to update the same till conclusion of trial.

(e) Application stands disposed of accordingly.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-