

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1968 OF 2022

Dagu Badud Bhosale,
Age : 30 Years, Occ. Agriculture,
R/o. Padegaon, Tal. Kopargaon,
Dist. Ahmednagar. ... Applicant.

VERSUS

The State of Maharashtra,
Through Nagar Taluka Police Station,
Dist. Ahmednagar. ... Respondent

....
Mr. A. M. Gakwad, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for the Respondent State.

....

CORAM : S.G. MEHARE, J.
DATE : 11.01.2023

PER COURT :-

Heard the learned counsel for the applicant and
learned APP for the respondent-State.

2. The applicant is an accused in the present case
along with co-accused for the offence punishable under the
Maharashtra Control of Organized Crime Act, 1999 (for short
the 'MCOC' Act). The prosecution case is that first informant
received a phone call for purchasing Soyabin edible oil.
However, he was taken to one place, where three unknown

persons were already there. They robbed Rs. 60,000/-, two Mobile Phones and one wrist watch of Rado Company from the complainant.

3. The learned counsel for the applicant argued that the applicant has been falsely involved in the crime. He was never the member of the organized crime syndicate. He belongs to Pardhi community by caste. Therefore, when any offence as such happens in the locality, the police used to pick him up and register the crime against him. Most of the organized crimes are registered in the name of persons from pardhi community. The applicant was also arraigned as an accused in another case registered for the offence punishable under 'MCOC' Act, 1999 of the year 2019. However, he was not arrested in that crime, subsequent thereto, present crime was registered and accused was arrested on 17th April of 2021. Thereafter, in the crime of the year 2019 for 'MCOC' Act, 1999 he was released on 4th December, 2021. Therefore, there would be no bar of Sub section 5 of section 21 of the MCOC Act. Relying on the case of ***State of Maharashtra Versus. Bharat Shantilal Shaha and others, 2008(13) SCC 5*** learned counsel for the applicant argued that second part of the said section i.e. "or under any other Act" has been declared

unconstitutional. On the day of the arrest in the crime he was not on bail for the offence punishable under MCOC Act, therefore, he may not be refused bail.

4. According to him, in the case at hand, nothing has been recovered from him. The prosecution has no evidence that the applicant was the member of organized crime syndicate with other co-accused. Out of seven cases shown registered against him, in three cases the applicant has been acquitted and in remaining cases he is granted bail. The applicant never got the share of any kind in the property stolen or extracted by committing organized crime. Nothing remained to be recovered. He is arraigned as an accused only on suspicion. The test identification parade is held belatedly. Therefore, possibility of not following the test identification rules are high. Hence, he may be granted bail.

5. The learned A.P.P. strongly opposed the application. However, he accepted the proposition of law, laid down by the Hon'ble Supreme Court in the case of State of Maharashtra Versus Bharat Shantilal Shah and others cited (supra) and opposed the application on the ground that the applicant is

repeatedly involved in the crime. Therefore, releasing him on bail may be harmful to the society.

6. It appears that there were cases of robbery against the applicant. In the cases in which he was acquitted, were the cases lodged against an unknown person. Considering the fact of the case, arresting the applicant on suspicion appears probable. Nothing has been recovered from the applicant in the case at hand. Therefore, the applicant has a good case on merit. Hence the order

O R D E R

- (I) Bail Application is allowed.
- (ii) Applicant Dagdu Badud Bhosale be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount in Crime No. I-184 of 2021, registered with Nagar Taluka Police Station for the offence punishable under Sections 395, 120 (b), and Section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 on the condition that :-
 - (a) He shall attend the concerned Police Station on every Saturday of the first week of each month, between 12.00 noon to 2.00 p.m. till the conclusion of the trial.

(S.G. MEHARE)
JUDGE

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