



PMB

1.BA.820-23.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.820 OF 2023

ROHAN SATISH BHALKE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Shailesh S. Kharat for the applicant.

Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 14, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 395, 120-B of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOCA', for short) registered on 09.09.2021 vide C.R. No.290 of 2021 with Lonand Police Station, Satara.

3. The applicant is the accused No.4. The applicant was arrested on 13.09.2021. It is the case of the prosecution

that on 09.09.2021 the informant was carrying cash of Rs.5,34,000/- with him to pay the wages of the labour. Near the railway bridge he slowed down his car. At that time five unknown persons came on two bikes. They broke the window of his car and threatened him with a scythe. The complainant fled out from the left side door of car and started running. The informant noticed that one person took the bag of cash, mobile and key of car whereafter all ran away.

4. The applicant was arrested on 13.09.2021 and is in custody for last two years. The applicant is claiming parity with other co-accused. The gang leader as well as the applicant are identified and both of them are alleged to have been seen along with the other co-accused at the time of offence. The gang leader Raju Ashok Jadhav has been enlarged on bail by the Special Judge by an order dated 20.07.2023. The Special Judge while enlarging the co-accused i.e. gang leader on bail has observed thus :-

“10] On perusal of record, it also appears that the handset was seized from the applicant and during the interrogation by Wanwadi Police Station, at Pune. Therefore, his name was involved and he was also arrested in the present crime.

11] On perusal of record, it reveals that on 04.03.2022, the accused Krushna and Dattatray Shirwale as well as Laxman Shirwale were released on bail by my learned predecessor. It appears that on the date of incident at time 17.20, the accused Rohan and Shiva Rathod had stopped the vehicle of the complainant and the accused Promod Parse had drawn iron Koyta, at that time the accused Raju and others moved to spot by motorcycle. They tried to reach at the spot. It appears that the the accused played above role while committing the offence.

12] The Hon'ble Bombay High Court in the case of **Dinesh Bhondulal Baisware Vs. The State of Maharashtra reported in 2016 ALL MR (Cri.) 3517** has placed reliance on the judgment of the Hon'ble Apex Court in **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and another, reported in AIR 2005 SC 2277 (1)**. Therein, the Hon'ble Apex Court has laid down that, "In order to examine whether the case of applicant falls within the scope of Section 21(4) or not, it is necessary that the Court must be satisfied that there is prima facie evidence against the applicant indicating commission of the offence under the provisions of the MCOC Act and that there should also be a reasonable possibility of the applicant committing the crime under the said Act." This can be seen from the observations in Paragraph 49 of the judgment, which are reproduced thus:

"We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be

necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite means rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

13] In the circumstances, the rigor of Section 21(4) of MCOCA Act may not come in the way to grant bail to accused Raju Ashok Jadhav. Considering the accusation made against the applicant and the nature of offence, no fruitful result come out, if applicant is kept behind bar for indefinite period."

5. Since the gang leader has been enlarged on bail who is having a similar role as the present applicant, even the present applicant can be enlarged on bail.

6. Learned APP while opposing the application for bail submitted that even while in custody the applicant had a fight with one of the inmates. It is the allegation that the applicant assaulted one of the inmates with fist and kick blows.

7. Considering that the applicant is in custody for more than two years and now that the gang leader has been enlarged on bail, even the present applicant can be enlarged on bail by imposing stringent conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Roshan Satish Bhalke in connection with C.R. No.290 of 2021 registered with Lonand Police Station, Satara shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of Lonand Police Station, Satara once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to

the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall not tamper with prosecution evidence.

(g) The applicant shall attend each and every date of trial unless exemption granted by Court for sufficient reason.

8. The application is disposed of.

(M. S. KARNIK, J.)