

VRJ

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

**BAIL APPLICATION NO.2149 OF 2022**

Karan Nana Shende

... Applicant

**V/s.**

The State of Maharashtra

... Respondent

VAIBHAV  
RAMESH  
JADHAV  
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Mr. Priyal G. Sarda for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

**CORAM : AMIT BORKAR, J.**

**DATED : JULY 18, 2023**

**P.C.:**

1. This is an application under section 439 of the Criminal Procedure Code, 1973 in connection with C.R. No.303 of 2019 registered with Walchand Nagar Police Station, Pune for offences punishable under section 395 of the Indian Penal Code, 1860 and section 31(ii) and 34 of the MCOC Act.

2. According to the prosecution, one Amin Gulab Mulla lodged first information report on 29<sup>th</sup> June 2019 alleging that he along with two other persons were proceeding in his pickup vehicle towards Jamkhed. Around 1:10 a.m. six masked persons came on motorcycle and obstructed their vehicle. They started beating informant's driver and threatened the informant with the help of stone and committed dacoity of Rs.1,85,000/- along with two cell phones. He, therefore, lodged report at 19:16 hours.

3. The applicant was arrested on 19<sup>th</sup> July 2019. After completion of investigation, the investigating agency filed charge sheet. The prosecution applied provisions of MCOC Act in connection with the said C.R.
4. The applicant applied for bail under section 439 of the Criminal Procedure Code, 1973, which came to be rejected by order dated 6<sup>th</sup> February 2021. The applicant, therefore, filed present bail application.
5. Learned advocate for the applicant submitted that prosecution has not shown any active role of the applicant in relation to the offence under section 395. There is no recovery from the applicant. The alleged test identification parade is in breach of prescribed procedure. The offences in relation to which provisions of MCOC Act are applied are individualistic in nature.
6. Per contra, learned APP submitted that confessional statement of co-accused implicates the applicant. Three witnesses have identified the applicant in test identification parade. The twin condition under section 21(4) of the MCOC Act is not applied. The applicant has antecedents and, therefore, it is likely that he will commit similar offences in future. On earlier occasion provisions of MCOC Act were applied as against the applicant.
7. Having considered the material on record, it appears that there is no recovery in relation to offence under section 395. Except statement of co-accused, at this stage, there is no material to connect the applicant with offence under section 395 of the Indian Penal Code, 1860. On perusal of the offences used for

attracting provisions of MCOC Act, it appears that the offences are individualistic in nature. No other gang member or leader is made accused in relation to the offences alleged against the applicant.

8. The complicity of the applicant *qua* offence under section 395 of the Indian Penal Code, 1860, needs to be adjudicated during trial. However, based on confessional statement of co-accused, further detention of the applicant is not justified. As regards the test identification parade, the applicant has raised doubts regarding legality of procedure which can be conclusively considered in the trial. However, from the gist of the material on record, it appears that there are reasonable grounds for believing that that applicant may not be guilty of the offence alleged. As there is doubt regarding complicity of the applicant in the offence alleged, on overall consideration of material against the applicant including antecedents, it appears that the applicant is not likely to commit any offence while on bail. The applicant is arrested on 19<sup>th</sup> July 2019. The charge is yet to be filed. Therefore, it is likely that the trial may not be over in near future. Therefore, the applicant has made out a case for grant of bail. Hence, following order:

a) The applicant be released on bail in connection with C.R. No.303 of 2019 registered with Walchand Nagar Police Station, Pune for offences punishable under section 395 of the Indian Penal Code, 1860 and section 31(ii) and 34 of the MCOC Act on furnishing PR. Bond in the sum of Rs.25,000/-, along with one or two sureties in the like amount.

b) The applicant shall remain present before the concerned

police station on first Saturday of each month between 11:00 a.m. to 02:00 p.m. till the conclusion of trial;

c) The applicant shall present before the trial Court on each date unless exempted specifically by the Court;

d) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

9. The bail application stands disposed on in above terms.

**(AMIT BORKAR, J.)**