IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2281 OF 2022

Navin @ Navnath Dashrath Chavan ....Applicant

Versus

The State of Maharashtra ...Respondent

Ms. Shubhangi Parulekar, Advocate for the Applicant.
Ms. Pallavi N. Dabholkar, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st AUGUST, 2023.

P.C. :

1. By this application, applicant is seeking bail in C.R. No.103 of 2019 registered with Shirur Police Station for the offences punishable under Sections 420, 327, 336, 323, 143, 149 and 109 of Indian Penal Code and Section 3(1)(ii) and 3(4) of Maharashtra Control of Organised Crimes Act.

2. It is prosecution's case that first informant - Khandu Dhamaji Gavhane was doing business of buying and selling of buffaloes, eight to ten days prior to the date of incident, he asked accused No.1 - Bhausaheb Pawar to show him buffaloes. On the date of incident i.e. 20th February 2019, accused No.1 took the informant and his brother on motor-cycle to place called Tandali to show the buffaloes. While going to Tandali accused No.1 asked the informant to stop the motor-cycle on the road to attend nature's call. Meanwhile, accused No.1 made a call to someone and then informant saw six to eight persons coming in their direction, those persons attacked the informant and his brother and took the amount of Rs.1,83,000/- from their pockets. It is further alleged that during the process of attack, accused No.1 did not intervene, therefore, on suspicion, the informant lodged complaint against accused No.1 and six to seven unknown persons. After registering the F.I.R., police arrested the present applicant and other co-accused. Applicant was identified by the informant and his brother - Manohar in test identification parade.

3. It is contention of learned counsel for applicant that the applicant is innocent and he has been falsely implicated in this case. No specific role has been attributed by the informant or his brother to applicant. No description of applicant was given by the informant in complaint. Even after completion of test identification parade, prosecution has not recorded statement of witnesses. The test

identification parade was not held as per Rules. There is no criminal case pending against the applicant except Crime No.278 of 2019 registered under Section 3(25) of Arms Act. Applicant is acquitted from all the pending 11 cases. Hence, requested to allow the application.

Learned counsel for applicant relied on ***Girish Kumaran Nayar versus the State of Maharashtra in 2021 (2) Bom.C.R.(Cri.)387 and Maruti Navnath Sonawane versus The State of Maharashtra reported in 2022 (2) Bom.C.r.(Cri.) 612***.

4. It is the contention of learned APP that applicant is the leader of the gang. Applicant has criminal antecedents. He has been identified in test identification parade by the informant and eye-witness. There was recovery of robbed amount of Rs.12,750/- from applicant. There is strong prima facie case to prove the involvement of the applicant in crime. Hence requested to reject the application.

5. I have heard both learned counsel, perused the F.I.R. and charge-sheet.

6. Record shows that applicant has criminal antecedents and about 15 criminal cases have been registered against him. It is the contention of learned counsel for applicant that out of these cases,

applicant has been acquitted in eleven cases. Record shows that in one case applicant has been convicted and other three cases are pending against him.

7. Section 21(4) of MCOC Act states that notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall if in custody be released on bail or on his own bond unless :

> (a)the public prosecutor has been given an opportunity to oppose the application of such release and when the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Also, reference need to be made to Section 2(d) and (e) of MCOC Act which states as under:

> "2(d): "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such

offence;

(e) "organized crime" means any continuing unlawful activity by an individual singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency:"

On bare interpretation of Section 2(d), the requirement is:

(i) the accused has indulged into activities prohibited by law for the time being in force;
(ii) it is cognizable and punishable with imprisonment for three years or more:
(iii) it was undertaken singly or jointly by the accused as a member of an organized crime syndicate or on behalf of such syndicate: and
(iv) that more than one charge-sheets have been filed before the competent Court in respect of such syndicate within the preceding period of ten years and that Court have taken cognizance of such offences.

In the case of ***Ranjitsing Brahmajeetsing Sharma versus State of Maharashtraa and another reported in AIR 2005 SCC 2277(1)***, the Hon'ble Apex Court has held that the restrictions imposed by Section 21(4) of the M.C.O.C. Act on the power of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no grounds for proceeding against him at all on the charge of an offence punishable under the M.C.O.C. Act. The said provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible.

8. In present case when first informant had gone to purchase buffaloes, at that time, accused No.1 and six to seven persons robbed him. In connection with this offence, police has arrested the applicant. The first informant and his brother who were present at the incident spot identified applicant in test identification parade. Whether that test identification parade was as per Rule or not is a part of the trial. Moreover, an amount of Rs.12,750/- is recovered at the instance of applicant, it shows his involvement in the crime. There is strong prima facie case against the applicant. He is leader of organised crime syndicate. Some criminal cases are pending against applicant.

Section 21(5) of the Maharashtra Control of Organised Crime Act, 1999 reads as under:

"(5) Notwithstanding anything contained in the

> Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question."

Applicant has committed present crime when he was on bail in other crime. Considering the above facts, he is not entitled for bail.

7. I have gone through the case laws cited by learned counsel for applicant. The facts of the cited cases and the case at hand are different, hence, not applicable to the present case.

8. In view of above, I pass following order :

(i) Application is rejected.

(SHIVKUMAR DIGE, J.)