

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

BAIL APPLICATION NO. 2510 OF 2022

Rahul Bharat Dighe

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Satyavrat Joshi i/b. Mr. Nilesh Mohite for the Applicant.

Mr. S.V. Gavand, APP for the State.

Mr. Avinash Palwe, ACP, Meghwadi Division, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 01st AUGUST, 2023.

P. C. :-

1. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in MCOC Special Case No.141/2022 pending on the file of learned Sessions Judge, Greater Mumbai. The said case arises from C.R.No.97/2021 registered with Meghwadi Police Station, Mumbai for offences punishable under sections 120-B, 143, 144, 147, 148, 188, 307, 326 r/w. 149 of the Indian Penal Code, sections 37(a)(1) r/w. 135 of Maharashtra Police Act and sections 37(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime (MCOC) Act.

2. Heard learned counsel for the Applicant and learned APP for the

State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Raj Verma. The facts narrated in the FIR prima facie reveal that on 17/04/2021, during night hours, the first informant and his friends were celebrating his birthday. On 18/04/2021, at about 00:30 hours, while the first informant was returning home, he heard some one calling out to him. When he turned around, he saw the co-accused Sandeep Pawar and Tushar walking towards him. He apprehended that they may assault him due to the previous enmity and tried to run away. However, the co-accused Sandeep Pawar inflicted an injury on his cheek by means of sharp weapon and the co-accused – Tushar assaulted the witness – Naresh. Pursuant to the FIR lodged by the said Raj Verma, C.R.No.97/2021 was registered with Meghwadi Police Station initially under sections 326, 188 r/w. 34 of the Indian Penal Code. Subsequently, the supplementary statement of the first informant was recorded on 18/05/2021 pursuant to which provisions under sections 143, 144, 147, 148, 307 r/w. 149 of the Indian Penal Code came to be added.

4. The Applicant was released on bail on 14/06/2021. After his release, the provisions of MCOC Act came to be invoked and the Applicant was taken into custody on 16/12/2021.

5. It is pertinent to note that the FIR does not disclose the name of the gang leader – Suraj Pote. The statement of the other injured witnesses was recorded in July, 2021 i.e, almost after a period of three months. The medical certificate reveals that the first informant had sustained deep incised wound on the right cheek. Though the Doctor has certified that the injury was of grievous nature, the said certificate does not prima facie indicate that the same is covered within the meaning of section 320 of the Indian Penal Code. Furthermore, though the first informant had alleged that the co-accused had also assaulted the witness – Naresh, there is no medical evidence to indicate that he was examined by Doctor or that he has sustained any injury.

6. It is also not in dispute that no charge sheet has been filed against the applicant prior to registration of this crime. It is alleged that one video recording seized under panchanama in the month of November, 2021 which was allegedly handed over by the witness – Pramod Nawghe, shows the involvement of the Applicant in the said

crime. Apart from the said video, the genuineness of which is yet to be tested, there is no other prima facie material to show the nexus between the Applicant and the Organized Crime Syndicate and/or the gang leader.

7. The Applicant is in custody since 16/12/2021. Charge is not yet framed and considering the large pendency, there is no possibility of the trial concluding within a reasonable time. Considering the above facts and circumstances and particularly the nature of the accusations and the material in support thereof, in my considered view, this would be a fit case to exercise discretion under section 439 of Cr.P.C. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in MCOC Special Case No.141/2022 pending on the file of learned Sessions Judge, Greater Mumbai arising out of C.R.No.97/2021 registered with Meghwadi Police Station, Mumbai is ordered to be released on bail on furnishing PR. bonds in the sum of Rs.50,000/- with one or two solvent sureties in the like amount ;
- (ii) The Applicant shall report to Meghwadi Police Station,

Mumbai once in three month on every 1st Monday of the month between 11.00 a.m. to 02.00 p.m. till framing of the charge ;

- (iii) The Applicant shall not interfere with the first informant and the other injured witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

8. Bail Application stands disposed of in above terms.

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2023.08.05
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(SMT. ANUJA PRABHUDESSAI, J.)