

VRJ

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

BAIL APPLICATION NO.103 OF 2023

VAIBHAV
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Avinash Alias Tammya Raju Shetty	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Aniket U. Nikam i/by Mr. Amit Icham for the applicant.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 17, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.273 of 2021 dated 11th June 2021 registered with Chaturshringi Police Station, Pune for offences punishable under sections 392, 323, 341, 506 read with section 34 of the Indian Penal Code, 1860 and sections 3(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

2. According to the prosecution, the complaint was lodged by Avinash Jaiswal, native of Uttar Pradesh is residing at Key West Construction Site, Labour Quarters, Balewadi, Pune. He used to deposit the amounts of labours in the bank. On 10th June 2021 he had collected Rs.37,000/- and was going to Kotak Mahindra Bank,

branch at Ganpati Temple, Baner, Pune. At about 10:15 a.m. he had reached near Sausarholick Academy near Jupiter Hospital on Chakan Road, Baner. At that time, applicant/accused Avinash Shetty and co-accused Dattatraya Algude proceeding on Shine motorcycle obstructed the complainant. The accused asked the complainant as to why he had consumed Ganja and spit the smoke on the face of her sister. Thereafter, one of the accused tried to forcibly took out cash amount from the complainant's pocket. When the complainant objected, the accused stabbed him and forcibly took away Rs.37,000/- from the pocket of his pant, black coloured wrist watch and silver ring from the finger of complainant. The accused threatened the complainant not to approach the police saying that they would not allow him to work in said area. The complainant approached Chaturshringi Police Station and lodged report on 11th June 2021. During investigation accused came to be arrested on 14th June 2021. During interrogation, cash amount of Rs.13,000/-, wrist watch valued of Rs.500/-, silver ring of Rs.500/- and Honda Shine motorcycle came to be seized. It further revealed that two more crimes are registered against the applicant/accused Avinash Shetty and four crimes were registered against co-accused Dattatraya Algude. It was further revealed that they are committing the crime in organized manner as a crime syndicate. Accordingly, sanction for prosecution under Maharashtra Control of Organised Crime Act came to be obtained and charge-sheet is filed against both the accused for the offence under sections 392, 341, 506 read with section 34 of the Indian Penal Code, 1860 and Section 3(i)(ii),

3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter, MCOC Act, for short).

3. The applicant came to be arrested on 14th June 2021. A proposal was sent to the competent authority under MCOC Act for sanctioning of prosecution under the MCOC Act. After giving sanction, charge-sheet came to be filed against the applicant and others for offences as stated above.

4. The applicant, therefore, filed an application under section 439 of the Criminal Procedure Code, 1973 before the learned Sessions Court, which came to be rejected by order dated 27th September 2022.

5. Learned advocate for the applicant submitted that in the first information report the accused persons are shown as unknown persons. However, no Test Identification Parade was conducted. Though there is recovery of cash and watch, the identification of the articles has not been conducted. CCTV footage has not been produced on record. With the result, at this stage there is nothing to connect the applicant with the offence alleged. In absence of continuous unlawful activity, the provisions of MCOC Act could not have been invoked. He, therefore, prayed for relief under section 439 of the Criminal Procedure Code, 1973.

6. Per contra, learned APP opposed the grant of bail on the ground that there is recovery of articles in the form of cash and watch. The applicant has three antecedents to his discredit out of which the competent authority under MCOC Act has considered two offences. The offences are registered along with one offence is

registered along with gang leader. Therefore, there is possibility of the applicant committing similar offences under the MCOC Act.

7. On perusal of material on record, it appears that the informant stated in the report that two unknown persons committed the offence; however, at this stage no Test Identification Parade has been conducted. The recovery of articles from the applicant has not been identified by the informant. CCTV footage is not placed on record. It is not clear as to whether CCTV footage was available or not. With the result, prima facie there is no material on record to connect the applicant with the present offence. In the absence of material to indicate complicity of the applicant in the alleged offence, the ingredient of continuous unlawful activity is not satisfied.

8. In so far as antecedents are concerned, the authority under the MCOC Act while considering sanctioned and taken into consideration two offences against the applicant. In C.R. No.258 of 2021 registered for offences punishable under section 379 read with section 34 of the Indian Penal Code, 1860, the applicant has been acquitted. In C.R. No.255 of 2021, the applicant has been released on bail. However, in the absence of material to connect the applicant with the present offence, prima facie there are reasonable grounds for believing that the applicant is not guilty for the offence involved and he is not likely to commit any offence under the act while on bail. Hence, following order:

a) The applicant is directed to be released on bail in

connection with C.R. No.273 of 2021, dated 11th June 2021, registered with Chaturshringi Police Station, Pune for offences punishable under sections 392, 323, 341, 506 read with section 34 of the Indian Penal Code, 1860 and sections 3(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, 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 mark his presence before the concerned police station on first Saturday of every month between 11.00 a.m. to 2.00 p.m.;

c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;

d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;

e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

f) 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 of in above terms.

(AMIT BORKAR, J.)