

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

BAIL APPLICATION NO. 3693 OF 2022

Javed Abdul Karim Shaikh

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Ms. Misbaah Solkar for the Applicant.

Ms. P.N. Dabholkar, APP for the State.

Ms. Asha Kadam, API, Trombay Police Station, present.

CORAM : G.A. SANAP, J.

DATED : 22nd DECEMBER, 2023.

P. C. :-

. The Applicant/accused no.4 has made this Application for bail under Section 439 of the Criminal Procedure Code, in connection with C.R.No.332/2020 registered with Trombay Police Station, Mumbai for the offences punishable under Sections 143, 144, 147, 148, 302, 427, 504, 506 r/w. 149 of the Indian Penal Code and Sections 4 and 25 of the Indian Arms Act.

2. I have heard the learned advocate for the Applicant and the learned APP for the State.

3. The learned advocate for the accused submitted that the co-accused (accused no.3) attributed with similar role, has been released on bail by this Court (Coram : Bharati Dangre, J.) vide order dated 22/08/2022. The learned advocate for the Applicant/accused no.4 submitted that on the ground of parity with the accused nos.3, the accused no.4 is entitled for bail. The learned advocate for the Applicant submitted that no specific role has been attributed to this Applicant in the incident of assault. The learned advocate for the Applicant submitted that the crime in question is the 1st crime registered against this accused under the provisions of MCOC Act. The learned advocate for the Applicant submitted that on facts as well as on law, observations made while deciding the bail application of accused no.3 vide order dated 22/08/2022 would be equally applicable to the case of this accused.

4. The learned APP submitted that the ground of parity is not available as far as accused no.4 is concerned with accused no.3. The learned APP submitted that the role attributed to the accused no.4 is more serious than the role allegedly played by the accused no.3. The learned APP took me through the confessional statement of the accused no.4 and pointed out that in his statement, he has admitted that he was

carrying the bamboo stick and after the incident, he chased the informant and others. The learned APP submitted that all these aspects have been dealt with by the learned Judge and on doing so, his bail application was rejected.

5. I have gone through the FIR and other records.

6. It is true that the Applicant/accused no.4 was a part of the 1st group of the assailants. However, a perusal of the FIR and other records indicate that on the spot of the incident, the accused no.4 had not carried any weapon. Similarly, no specific role has been attributed to him. It is seen that as far as accused no.4 is concerned, his role is similar to the role played by the accused no.3 who has been granted bail by this Court. In my view, the observations made in the bail order dated 22/08/2022 would apply with equal force to the case of Applicant/accused no.4. It would be profitable to reproduce the paragraph nos.5 to 9 of the said order for the purpose of ready reference. The same is extracted below :-

“ 5. As far as the present Applicant is concerned, he is arraigned as Accused No.3 and in the charge-sheet his role has been collectively referred to alongwith other accused persons of assaulting the nephew of

the complainant, Abdul Karim Khudabaksh Shaikh by sword, wooden and iron rod, stump, wooden rod and fist blows. They are also accused of causing injuries to his younger brother Abdul Karim and to the complainant and her daughter. The charge-sheet allege that the head of the Gang, Rashid Shaikh has committed offences for benefit of himself and benefit of his associates as an organized crime syndicate and i.e. how the offence under MCOC Act is invoked in the subject CR. The CCTV footage of the spot has been obtained and compiled in the charge sheet.

6. *Statement of the witnesses compiled in the charge sheet has attributed general role to the present Applicant. When the learned APP is asked about commonality of the offences so as to invoke the provisions of MCOC Act, she state that there is no offence which is common between the Applicant and the gang leader.*

The observations of the Hon'ble Apex Court in the case of State of Maharashtra vs. Lalit Somdatta Nagpal, (2007) 4 SCC 171, are very relevant and are reproduced on page 30, as below :-

“ As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No.25/03 of Rasayani Police Station, Raigad, under Sections 468,420,34,

Indian Penal Code and Sections 3, 7,9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23 (1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22nd August, 2005. ”

7. *The charge-sheet did not point out any material to show that the Applicant is a member of the crime syndicate.*

8. *In the light of above observations, co-accused Shabana Shaikh is released on bail by the Division Bench of this Court in WP No.1959 of 2021 with the following observations.*

21. We have adverted to the FIR lodged by the informant, elaborately. It is pertinent to note that in the FIR, the petitioner was not named as one of the assailants or even the person who accompanied the assailants. In the supplementary statement recorded on 17th November, 2020, the petitioner was named as the member of the second group which rushed to the scene of occurrence after Rashid (A1) and his associates

mounted the murderous assault upon the deceased Wasim. Second group also allegedly assaulted Wasim, the deceased. In a further supplementary statement of the first informant recorded on 6th December, 2020, the first informant named two persons who were stated to be the unknown members of the second group in the first supplementary statement dated 17th November, 2020. In the second supplementary statement dated 6th December, 2020, the petitioner was again attributed the role of having assaulted the deceased by fist and kick blows.

9. *Further observations in Para 23 are also equally applicable to be present Applicant, who submitted that he was sleeping in the grocery shop and did not participate in the incident.*

“ 23. The aforesaid statements, even if taken at their face value, prima facie do not indicate that the petitioner entertained the common object with which the unlawful assembly was animated. The time and place of the occurrence cannot be lost sight of. Nor the prelude can be ignored. From the own showing of the first informant, the deceased Wasim and Akram, had gone in front of the grocery shop of the petitioner at the dead of night i.e. 3.30 am and started hurling abuses at the petitioner; the reason being the petitioner's relationship with Rashid (A1). Since the son of the petitioner Arbaj used to sleep in the said grocery shop, Wasim and Akram banged the shutter of the grocery shop. The first informant and her daughter were trying to pacify the Wasim and Akram. At that time, the assailants led by Rashid (A1) allegedly came thereat

armed with the weapons and assaulted Wasim and Akram. ”

7. In my view, considering the above facts and circumstances, the ground of parity is available to the Applicant-accused no.4. On the basis of the acts done by him, later on, his role cannot be distinguished and put on a higher pedestal than the role of accused no.3. As far as the accused no.4 is concerned, the provisions of MCOC Act could not be invoked against him by accusing him as a member of Organized Crime Syndicate. The rigors of Section 21(4), in my view, therefore would not stand in the way of the accused no.4. As such, the accused no.4 is entitled to get bail. Hence, the following order :-

(a) The Bail Application is allowed.

(b) The Applicant – Javed Abdul Karim Shaikh be released on bail in connection with C.R.No.332/2020 registered with Trombay Police Station, Mumbai on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two solvent sureties in the like amount.

(c) The Applicant shall attend the Investigating Officer of Trombay Police Station, Mumbai on 1st Monday of trimester between 10:00 a.m. to 12:00 noon.

(d) The Applicant shall not in any manner 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) The Applicant shall not threaten or intimidate the complainant or witnesses. If it is found that the Applicant is indulging in any such activities, the same shall be the ground for cancellation of this bail.

(f) On being released on bail, the Applicant shall furnish his contact numbers and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the trial Court and shall not

seek unnecessary adjournments.

8. Bail Application stands disposed of in above terms.

9. It is made clear that observations made herein above be construed as an expression of opinion only for the purpose of granting bail. The learned Judge trying the case shall not, in any manner, be influenced by the said observations.

(G.A. SANAP, J.)

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