



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 31 OF 2024

**VINOD RAMESH THORAT
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Petitioner : Mr. N.L.Chaudhari
Addl. PP for Respondent/s – State : Mr. M.M.Nerlikar

...

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 16 JANUARY 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

. Heard both sides finally.

2. The petitioner is invoking jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seeking pre-arrest protection in pursuance of Crime No. 275 of 2023 of Azad Nagar Police Station, Dhule, District Dhule, for the offences punishable under Sections 302, 364, 143, 147, 148, 149, 323, 504, 506, 120 (b), 109, 201, 75 of IPC, under Section 4/25 of Arms Act, under Sections 37(1) (3)/135 of Maharashtra Police Act and under Sections 31(i), 3(2), 3(4) of Maharashtra Control of Organized

Crimes Act, 1999 (hereinafter referred to as 'MCOCA Act' for sake of brevity and convenience).

3. On 09.10.2023, offence was registered at the instance of Vinayak Jagan Salunke/brother of deceased Shubham. It is alleged that Shubham was working with the petitioner, but due to the differences he disassociated from him and since then the petitioner was having grudge against him. On 09.10.2023 at about 01.00 am informant learnt about assault on Shubham and rushed to hospital. Shubham was found to be brutally assaulted by sharp weapons who narrated the incident of assault by eight accused persons named them. He succumbed to the injuries by 09.50 a.m. Shubham was assaulted by the accused persons at 10.30 p.m on 08.10.2023 at Gandhi Putala. He was taken to dumping ground at Warkhedi Road where he was again assaulted.

4. The investigation is yet to be concluded. No charge-sheet has been filed. First Information Report does not disclose name of the petitioner. His name has been disclosed during the course of the investigation. Material is being collected against him. On 01.11.2023, a proposal was submitted to Special Inspector General of Police, Nashik for approval under Section 23 (1) of

MCOC Act. The approval was granted by order dated 23.11.2023. Petitioner has been added as accused and offence under Sections 3(1)(1), 3(2), 3(4) of MCOC Act, are added. The petitioner has not be arrested till this date.

5. Petitioner submitted Anticipatory Bail Application No. 974 of 2023 before Special Judge, Dhule. It was rejected by order dated 06.12.2023. Under these circumstances, the petitioner is seeking pre-arrest protection.

6. Learned counsel Mr. N.L. Chaudhary has advanced following submissions :

a) There are no allegation against petitioner in FIR. He is falsely implicated in the offence due to political rivalry. He is a social worker and belongs to Bhartiya Janata Party.

b) Deceased Shubham was habitual offender. More than 15 cases were pending against him. He had filed false complaints against son of the petitioner and another i.e. Crime No. 179 of 2022. Petitioner's wife Lalita was abused and her modesty outraged by deceased. On 25.02.2023, an offence bearing CR No. 62 of 2023 was registered against him. Thus, there was animosity between petitioner and the deceased.

- c) The petitioner is falsely implicated at the instance of former MLA Mr. Anil Gote. Mr. Gote and his wife had a grudge due to offence bearing CR No. 94 of 2016 and offence bearing CR No. 13 of 2018 stated to have been registered by Mrs. Hema Anil Gote.
- d) The provisions of MCOC Act are not attracted. The offence does not fall within the ambit of Sections 2(e) or 2(f) of the Act and at the most it could be only under the provisions of Indian Penal Code.
- e) No charge-sheet has been filed against the petitioner till this date in any of the offences registered against him. There is not a single offence registered against the petitioner along with other co-accused. No case is made out for offence under Sections 3 (i) (i), 3 (2) and 3 (4) of Act.
- f) It is an abuse of process of law. The petitioner is ready to co-operate with the police.
- g) Lastly, it is submitted that cognizance should not have been taken and investigation should not have been done by adding the provisions under the Act.

h) Learned counsel for petitioner seeks reliance on following judgments of the Supreme Court and this Court :

- i) The judgment dated 30.05.2022 in Special Leave to Appeal (Cri.) No. 1815 of 2022 Mohammad Iliyas Mohamad Bilal Versus The State of Gujarat.
- ii) The judgment of this Court in the matter of Surjitsingh Bhagatsingh Gambhir Versus State of Maharashtra in Writ Petition No. 913 of 2019 dated 13.09.2019.
- iii) The judgment of this Court in the matter of Shabana Parveen Inayatullah Shaikh Versus State of Maharashtra in Writ Petition No. 1959 of 2021 dated 13.08.2021.
- iv) Hema Mishra (Km.) Versus State of Uttar Pradesh, reported in AIR 2014 SC 1066.

7. Learned APP repels the submissions in following manner :

- a) There was a cogent material placed before approving authority against the petitioner and approval was obtained under Section 23(1) of the Act. There is incriminating material collected against the petitioner.
- b) The charge-sheet has not been filed and the investigation is under way. The petitioner has an opportunity to point out to the

Special Court at the time of taking cognizance under Section 23(2) that provisions of the Act are not attracted.

c) The petitioner has been absconding. He is needed for the custodial interrogation and to conclude the investigation.

d) Learned APP places on record the proposal for approval submitted under Section 23(1) of the Act to demonstrate the criminal antecedents of the petitioner including involvement in organized crime and formation of the crime syndicate.

e) The papers of investigation have been referred to show incriminating role played by the petitioner, his *modus* and *motive* for eliminating Shubham.

f) Learned APP seeks reliance upon following judgments.

i) Zakir Abdul Mirajkar Versus State of Maharashtra and Others, reported in **2022 (9) SCR 150** ;

ii) Abhishek Versus State of Maharashtra and Others, reported in **AIR 2022 SC 2488**.

8. We have considered rival submissions of the parties. With the assistance of both the counsels, we have gone through

the papers of investigation and the documents annexed to the petition.

9. It transpires that charge-sheet is yet to be filed and investigation is under-way. There is a brutal assault on deceased Shubham with deadly weapons. The petitioner has not been arrested. The proposal for sanction submitted to Special Director General of Police shows that material was placed before him seeking approval under Section 23 (1) of the Act. An approval has been granted by order dated 23.11.2023.

10. It is a matter of record that there were few offences registered against deceased Shubham. We have carefully gone through the complaints of CR No. 179 of 2022 for offence under Sections 324, 323, 504, 506 and 34 of IPC, complaint bearing CR No. 62 of 2023, under Sections 354, 452, 392, 323, 504, 506 and CR No. 131 of 2018 under Section 354 of IPC. There is reason to believe that there was rivalry between the petitioner and deceased Shubham. The material placed on record by learned APP indicates that there is a motive for the petitioner to eliminate deceased Shubham. The submissions of learned counsel for the petitioner about his false implication cannot be accepted at this stage.

11. We have noticed that deceased Shubham was history-sheeter. Simultaneously, the papers of investigation show criminal antecedents of petitioner also. Just because the deceased was history-sheeter that cannot be a ground to grant relief to the petitioner. Other material and overall circumstances would be necessary to be considered.

12. The investigation is under way. The petitioner will have an opportunity to point out to the Special Court at the stage of taking cognizance of the offence under Section 23(2) of the Act that no case is made out to attract provisions of MCOC Act. After completion of the investigation, the matter can be examined by the competent court to verify the ingredients of Section 2(e) and 2(f) of the Act. It would be too hazy at this stage to conclude that neither organized crime nor organized crime syndicate is spelt out. We reject the submission of the learned counsel for the petitioner in this regard.

13. The petitioner has not made himself available for investigation. The proposals submitted for securing approval under Section 23(1) of the Act indicates prima-facie material to proceed against the petitioner under the provisions of the Act. The

competent authority having been satisfied, has granted approval. We do not see any perversity or patent illegality in it. Due procedure appears to have been followed for proceeding against the petitioner under the Act. We do not approve the submission of the petitioner that it is an abuse of process of law to apply the provisions of MCOC Act.

14. The learned counsel for the petitioner submits that not a single charge-sheet has been filed in any of the offence registered against the petitioner. The investigation of the present offence is yet to be concluded. We have already recorded that the petitioner will have an opportunity to point out to the Special Court that the provisions of the Act are not attracted. The implications of not filing charge-sheet can be examined after completion of the investigation. We do not propose to offer any comment at this stage.

15. The judgment cited by the petitioner in the matter of *Surjit Singh Gambhir* (supra) and *Shabana Parveen* (supra) are distinguishable. In both the matters, charge-sheet was filed and there was order of sanction under Section 23(2) of MCOC Act. The

case in hand is yet to reach that stage. Therefore, the judgments cited by the petitioner can not be made applicable.

16. Learned APP refers to incriminating material against the petitioner. He vehemently urges the need of custodial interrogation. Our attention is invited to page nos. 267, 269, 271, 390, 392, 396, 612, 620 and 622 to demonstrate involvement of the petitioner.

17. The police has recorded memorandum panchnama of co-accused Mahesh under Section 27 of the Evidence Act showing place where the petitioner had instigated the co-accused to do away with Shubham by offering cash. It is corroborated by the certificate under Section 65 (b) and video clip. We have been shown the statements of Meerabai to show the animosity between the petitioner and the deceased. NCR No. 116 of 2023 registered at the instance of Meerabai, written complaint by deceased Shubham dated 11.11.2022 show apprehension of the deceased against the petitioner.

18. The list of the offences registered against the petitioner discloses seventeen offences. Out of them there is acquittal in three

offences. Besides that three non-cognizable cases are registered against him. The petitioner has not made himself available for the investigation. We have also been shown CDR disclosing mobile conversation of the petitioner with co-accused. The learned APP is justified in contending that there is a need of custodial interrogation. There is overwhelming material showing involvement of the petitioner.

19. Considering the police papers, we are of the considered view that the custodial interrogation of the petitioner is necessary. Considering the gravity of the offence, this is not a fit case to grant pre-arrest protection. In *Abhishek* (supra) paragraph no. 21 reads as follows:

“21. As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an ‘absconder’ and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence. By way of reference, we may observe that in relation to the indulgence of pre-arrest bail in terms of Section 438 CrPC, this Court has repeatedly said that when an accused is absconding and is declared as proclaimed offender, there is no question of giving him the benefit of

Section 438 CrPC. What has been observed and said in relation to Section 438 CrPC applies with more vigour to the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India. The submissions on behalf of the appellant for consideration of his case because of application of stringent provisions impinging his fundamental rights does not take away the impact of the blameworthy conduct of the appellant. Any claim towards fundamental rights also cannot be justifiably made without the person concerned himself adhering to and submitting to the process of law.”

20. We find merit in the submissions of learned APP.

21. The petitioner is not entitled to pre-arrest bail. The Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]