

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

ANTICIPATORY BAIL APPLICATION NO. 2911 OF 2024

Samrat Subhash Korane

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Kedar J. Patil a/w Mr. Sachin Y. Mane, Mr. Pratik G. Tare and Ms. Sakshi S. Kadam, for Applicant.
- Ms. Rutuja A. Ambekar, APP for Respondent.

CORAM : MANISH PITALE, J.

DATE : 03rd DECEMBER, 2024.

P. C. :

1. The applicant is seeking anticipatory bail in connection with First Information Report No.0136 of 2019 dated 09th April, 2019, registered at Police Station Rajarampur, District Kolhapur, for offences under Sections 143, 147, 149, 395, 307, 353, 332, 155, 109, 324, 323 and 427 of the Indian Penal Code, 1860 (IPC); Sections 4 and 5 of the Maharashtra Prevention of Gambling Act; Sections 65(e) of the Maharashtra Prohibition Act and Sections 37(3) and 135 of Maharashtra Police Act.

2. This Court is further informed that subsequently provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) were invoked and upon filing of charge-sheet, the accused persons, including the applicant are additionally facing prosecution for offences under Sections 3(1) (ii), 3(2), 3(4), 3(5) of the MCOC Act.

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3. At the outset, the learned APP while tendering affidavit-in-reply has raised preliminary objection about maintainability of the present application. It is pointed out that since offences under the MCOC Act are also registered and invoked in the present case, the bar under Section 21(3) thereof applies in full force against the applicant and prayer for anticipatory bail cannot be entertained. It is further brought to the notice of this Court that in the context of the applicant proclamation proceedings under Section 82 of the Code of Criminal Procedure, 1973 (CrPC) were undertaken in the year 2019 itself and on 26th November, 2019, the concerned Court of Special Judge under the MCOC Act, Pune, was pleased to issue proclamation. It was submitted that in the face of such proclamation having been issued, the present application ought not to be entertained.

4. It was further brought to the notice of this Court that the applicant with other co-accused persons had filed writ petitions seeking quashing of the proceedings. The said writ petitions were dismissed by an order dated 21st April, 2020 passed by the Division Bench of this Court. The Special Leave Petitions filed to challenge to the said order of the Division Bench were also dismissed by an order dated 24th August 2022, passed by the Supreme Court, thereby indicating further ground for not entertaining the present anticipatory bail application.

5. The learned counsel for the applicant submitted that the

aforementioned facts upon which the learned APP has placed reliance cannot be disputed, but he placed reliance on a recent judgment of the Supreme Court dated 12th November, 2024, passed in Criminal Appeal No.4564 of 2024 (Asha Dubey Vs. State of Madhya Pradesh), wherein the Supreme Court observed that even if the proclamation under Section 82 of the CrPC has been issued, it is not as if in all cases there would be a total embargo in considering application for grant of anticipatory bail. He submitted that the aforesaid position of law may be taken into consideration and the present application may be allowed.

6. This Court has considered the rival submissions. Section 21 (3) of the MCOC Act, read as follows :

“Section 21. (3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.”

7. It is clear from the above quoted provision that there is statutory embargo on considering the present application, as offences under the MCOC Act are also registered. This Court is conscious of the fact that in such circumstances, it has also been laid down if it can be demonstrated that a strong *prima facie* case is made out to show that the case of the Investigating Authority and the prosecution is so absurd that the provisions of the statute

itself cannot be invoked, the Court can perhaps consider the application for anticipatory bail. This is evident from such applications being entertained even in cases where provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been invoked. Yet, this Court does not find anything extraordinary in the present set of facts to show any indulgence to the applicant.

8. It is also an admitted position that as against the applicant, as far back as on 26th November, 2019, the Competent Court issued proclamation under Section 82 of the CrPC. As per the position of law clarified by the Supreme Court in various judgments, including judgment in the case of *Premshankar Prasad Vs. The State of Bihar*¹ and order dated 07th October, 2021, passed in SLP (Criminal) No. 7358 of 2021 (*Sanatan Pandey Vs. State of Uttar Pradesh and Anr.*), followed by this Court in various orders, when a proclamation under Section 82 of the CrPC is issued against an accused, the concerned Court ought not to exercise power to entertain a prayer for grant of anticipatory bail. The said position of law clearly militates against the contentions sought to be raised on behalf of the applicant in the present case. As regards the order of the Supreme Court in the case of **Asha Dubey Vs. State of Madhya Pradesh** (*supra*), suffice it to say that the said case was concerned with offence under Section 108 of the Bharatiya Nyaya Sanhita, 2023,

1 AIR 2021 SC 5125

pertaining to abetment of suicide, where the mother-in-law of the deceased was before the Supreme Court. It was obviously a matter arising out of a family dispute and the main accused in the said person was the son of the appellant before the Supreme Court and there were offences also registered under Sections 3 and 4 of the Dowry Prohibition Act, 1961. It is in the peculiar facts of the said case, that the aforementioned observations were made by the Supreme Court.

9. In contrast, in the present case, the applicant is facing prosecution for serious offences, including offences under the MCOC Act. In such a situation, the position of law indicated in the order of the Supreme Court in the case of **Asha Dubey Vs. State of Madhya Pradesh** (*supra*) cannot inure to the benefit of the applicant.

10. The applicant has been absconding since the year 2019, there is proclamation operating against him and he has been approaching this Court and the Supreme Court seeking quashing of the proceedings and such prayers have been rejected all through.

11. The aforementioned circumstances, sufficiently demonstrate that the application cannot be entertained. Accordingly, it is dismissed.

(MANISH PITALE, J.)