

Ajay

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

BAIL APPLICATION NO. 317 OF 2024

Vikas Mahendra Singh

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Prashant Pandey a/w. Mr. Dinesh Jadhvani, Mr. Irfan Unwala i/by W3Legal LLP for the Applicant.
 - Ms. P.N. Dhabholkar, APP for Respondent – State.
 - Mr. Jagannath B. Shinde, Tilak Nagar Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 10, 2024.

P.C.:

1. Heard Mr. Pandey, learned Advocate for Applicant and Ms. Dhabholkar, learned APP for Respondent – State.

2. This is a Criminal Bail Application filed by the Applicant - Vikas Mahendra Singh seeking enlargement on bail in CR No.I-131 of 2018 of Tilak Nagar Police Station, Dombivli registered on 03.08.2018 under Sections 307, 397, 325, 341 read with 34 of the Indian Penal Code, 1860 (for short “**IPC**”); Sections 135 and 37(1)(3) of the Bombay Police Act, 1951; Sections 1 and 3 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short “**MCOC Act**”). The Applicant has been apprehended and is in custody since 03.08.2018 in connection with the said crime.

3. There are three accused in the present crime. Applicant is arrayed as accused No.3. On 02.08.2018, i.e. the date of the incident, first informant – Pradeep Jain alongwith one of his associate was returning home on his scooter at about 10:45 p.m. when he was intercepted by accused No.2 and accused No.3. They apparently assaulted the first informant and snatched his bag carried by him which contained keys of the shop wherein the first informant was working and certain books. Role attributed to the accused No.3 i.e. Applicant herein is that he assaulted the first informant with a knuckle commonly known as metal finger on his head and injured him. Both accused Nos.2 and 3 were apprehend by passer-by. Seizure effected by the Investigating Agency is one weapon i.e. knuckle – metal fighter from the Applicant, one गुप्ती (traditional swordstick) from accused No.2, motorcycle used by accused Nos.2 and 3 and one pistol from accused No.1. Accused No.1 was arrested later. First informant's statements states that at the spot of incident and time of incident, he was fired upon, but in so far as the Applicant is concerned, he was involved with injuring him with the metal fighter on his head and snatching his hand bag.

4. Mr. Pandey, learned Advocate on behalf of Applicant would at the outset draw my attention to page No.40 of the Bail Application wherein details of six FIR's registered against accused No.1 between

30.10.2012 and 29.11.2018 in respect of crime under Section 379 and 392 of the IPC and in one instance under the Arms Act have been filed. These crimes are stated against Sr. Nos.1, 2, 5 and 7 in the list submitted by the Investigating Officer in the present case.

5. He would draw my attention to the crime registered at Sr. No.6 vide No.I-200 of 2018 under Section 392, 341 read with 34 of the IPC and would submit that the said FIR has been filed on 29.11.2018 with the Kapurbawdi Police Station, Thane wherein the Applicant has been arrayed as accused No.3.

6. While juxtaposing with the date of the instant case, he would submit that on the date of registration of the present crime on 03.08.2018, there ought to have been registration and cognizance of an offence, rather minimum two offences for invocation of the provisions of the MCOC Act against the Applicant which is not the case. He would therefore submit that invocation of the MCOC Act in the present case is completely unwarranted in view of the fact that name of Applicant has not been part of any of the six FIRs registered between 30.10.2012 and 29.11.2018 by the prosecution.

7. Mr. Pandey in support of his submissions has placed on record the decision of the Supreme Court in the case of *Mohamad Ilyas Mohamad Bilal Kapadiya Vs. State of Gujarat*¹ and would

¹ Petition for Special Leave to Appeal (Crl.) No.1815 of 2022, decided on 30.05.2022

contend in the instant case that on perusal of the offences relied upon by the prosecution at page No.40 of the Bail Application, it is clear that the conditions enumerated by the Supreme Court in the aforesaid decision are not fulfilled at all. He would submit that there is not a singular case registered of which cognizance has been taken or it imposes punishment of imprisonment of more than 3 years in the preceding 10 years so as to invoke the provisions of the MCOC Act against the Applicant. He would contend that there is no charge-sheet filed before any Competent Authority in that regard nor any Court has taken cognizance of any of such offences thereby entitling the prosecution to invoke prosecution of the MCOC Act and to label the Applicant as a member of an organized crime syndicate and acting on behalf of such syndicate.

8. He has also referred to and relied upon the following decisions of the Bombay High Court:-

- (i) *Sachin Damodar Ekhatpure Vs. The State of Maharashtra*²;
- (ii) *Tatyasaheb Laxman Karande Vs. The State of Maharashtra*³;
- (iii) *Girish Kumaran Nayar Vs. The State of Maharashtra*⁴;
- (iv) *Anand Narhari Phadtare Vs. The State of Maharashtra and Ors.*⁵; and

2 BA No.2830 of 2022, decided on 31.01.2023

3 BA No.684 of 2020, decided on 14.10.2022

4 BA. No.2241 of 2018, decided on 17.02.2021

5 BA No.409 of 2022, decided on 30.10.2023

(v) *Dipak Bhimrao Patil Vs. The State of Maharashtra*⁶.

9. He has taken me through the above decisions to contend that the decisions clearly cover the case of the Applicant seeking enlargement on bail and in view of the non-fulfillment of the mandatory conditions, long incarceration of the Applicant for a period of 5 years and 9 months from 03.08.2018 in custody, non framing of the charges, the trial not progressing would entitle the Applicant to be enlarged on bail as a substantive right of liberty under the provisions of Article 21 of the Constitution of India stands affected as also right to speedy justice also been affected.

10. Ms. Dabholkar, learned APP has vehemently objected the Application of Applicant and would contend that the provisions of Section 2(d) read with 2(e) and 2(f) of the MCOC Act defining continuing unlawful activity, organized crime and organized crime syndicate in its letter and spirit and entirety readwith the basic object of the MCOC Act would render the Bail Application of the Applicant redundant. She would submit that the object of the MCOC Act is to curb organized crime syndicates, rather crimes carried out by the gangs and in the instant case, there is adequate material on record namely the charge-sheet filed on 29.11.2018 in respect of which sanction has been accorded by the Competent Authority under the MCOC Act which would disentitle the Applicant for bail. That apart, she would submit

6 BA No.1188 of 2023, decided on 15.09.2023

that seizure of the weapons by the police officer from the accused at the spot of the incident / crime would have to be considered by this Court for rejecting the Application.

11. She has also referred to and relied upon the recorded statement of 9 witnesses of having seen the Applicant as also urged the Court to consider antecedents of the Applicant in view of the charge-sheet filed on 29.11.2018 in Kapurbawdi Police Station, Thane in respect of a crime which had taken place much prior in point of time before registration of the FIR on 29.11.2018 as stated by her.

12. In view of the above, she would submit that this Court be pleased to consider the grounds stated in the Affidavit-in-Reply dated 26.04.2024 filed by Sunil Kurade, Assistant Commissioner of Police, Dombivli which is appended at page No.519 of the Bail Application and reject the Application.

13. I have perused the record referred to and relied upon by both the learned Advocates and considered their submissions.

14. At the outset and *prima facie* while referring to page No.40 of the Bail Application and the same chart having been replicated by the Respondent in the Affidavit-in-Reply at page No.566, it is clearly seen that on the date of registration of the present crime on 03.08.2018, there is no other crime registered against the Applicant. The reliance by the prosecution on the crime registered on 29.11.2018

subsequently cannot be considered as an adequate material for invocation of the provisions of MCOC Act against the Applicant. It is clearly seen that all the above offences cannot be deemed to have been committed directly or indirectly by the Applicant. In that view of the matter, the fundamental condition as enumerated under Section 2(d) which defines continuing unlawful activity remains admittedly unfulfilled.

15. Though Ms. Dabholkar, learned APP has drawn my attention to the CDR which are placed on record at page No.561 to contend that the Applicant was actively involved alongwith accused No.1 from whom recovery of the pistol (weapon) is done and also the submissions of the prosecution in relation to the present crime, but for invocation of the provisions of MCOC Act fulfillment of the conditions as enumerated under the MCOC Act is a mandatory stipulation and if not fulfilled, invocation of the said Act would be bad in law. She has also vehemently relied upon the Application made for invoking sanction on 24.11.2018 and the sanction having been received on 06.12.2018 from the Competent Authority, but once again, I am constrained to observe that the said invocation or rather any action taken is later and is not in the period preceding the date of the FIR in the present case which is registered on 03.08.2018.

16. In that view of the matter and more specifically the fact that the Applicant having been incarcerated for 5 years and 9 months and his liberty having been affected and more specifically in view of non-fulfillment of the mandatory stipulation under the MCOC Act, I am of the opinion that the Applicant deserves enlargement on bail. Hence, the following order:-

- (i) Applicant – Vikas Mahendra Singh, who is facing trial in MCOC Special Case No.17 of 2018 pending on the file of Additional Sessions Judge, Thane, is ordered to be released on bail in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties of the like amount;
- (ii) Applicant shall report to the Tilak Nagar Police Station, Dombivli, once every month on the first Monday of the month between 11:00 a.m. to 02:00 p.m.;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (v) Applicant shall not influence with witnesses or tamper with the evidence in any manner; and
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable.

17. The above observations are *prima facie* and should not be construed as an expression of any opinion and are made only for the purpose of bail and the same shall not influence the trial in any manner whatsoever.

18. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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