

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

BAIL APPLICATION NO. 410 OF 2023

Nilesh Anand Pawar ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Nitin Sejpal, a/w Siddharth Gharat and Akshata Desai,
for the Applicant.

Ms. Gauri Rao, APP for the State/Respondent.

PSI Vilas Surve, Deonar Police Station, present.

**SANTOSH
SUBHASH
KULKARNI**

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SANTOSH SUBHASH
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CORAM: N. J. JAMADAR, J.

DATED: 19th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in C.R. No.407 of 2020 registered with Deonar Police Station for the offences punishable under Sections 307, 451, 452, 380, 324, 323, 504, 527, 427, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), read with Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime (MCOC) Act, 1999 and Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951
3. The first informant lodged a report with the allegations that on 18th December, 2020 at about 11.30 pm., someone called

him from in front of his house. He went down. The person had masked his face. He pointed out a knife on the waist of the first informant, and took him towards the road side. Co-accused Avan Chavan and his associates, including Nilesh Pawar – applicant, Santosh Talekar, Jaysing Sherkar and four unknown persons, were present thereat. They formed an unlawful assembly and in prosecution of the common object of the said unlawful assembly they started to assault the first informant. The latter's father, brother and other family members came to his rescue.

4. While the first informant was on his way to home one of the members of unlawful assembly slapped him. The applicant allegedly pushed the first informant and he fell down. Thereupon, the members of the unlawful assembly allegedly assaulted him by fist and kick blows. Co-accused Santosh alias Buwa Talekar allegedly assaulted the first informant's father on the chest with a knife. The first informant's brother Yashwant was assaulted by co-accused Jaysing Sherkar by means of a knife. When the residents came to the rescue of the first informant and his family members, the assailants fled away brandishing their knives.

5. During the course of investigation it transpired that co-accused Avan Chavan and the rest of the accused were members of an Organized Crime Syndicate. Co-accused Avan Chavan was the gang leader. The provisions contained in MCOC Act were, thus, invoked.

6. The applicant came to be arrested on 19th December, 2020, as one of the members of the alleged unlawful assembly in prosecution of the common object of which the offences were committed and also a member of the Organized Crime Syndicate.

7. Mr. Sejpal, the learned Counsel for the applicant, urged that the only role attributed to the applicant is that of giving a push to the first informant. In fact, there is material to indicate that there was a free fight between the two groups and the applicant had also sustained injuries therein. The prosecution has suppressed the genesis of the occurrence.

8. Mr. Sejpal further submitted that the invocation of the provisions of the MCOC Act, 1999, in general, and qua the applicant, in particular, is wholly unwarranted. The dispute between accused No.1 Avan Chavan and the first informant was allegedly over the award of a works contract. In any event, there is not a shred of material to indicate that the applicant was a

member of the organized crime syndicate as alleged. The applicant has not been implicated either with Avan Chavan, the alleged gang leader or any other member in any crime. Only one offence punishable under Sections 324 and 452 has been registered against the applicant at Tilak Nagar Police Station, which has no co-relation with the alleged organized crime. Therefore, the bar contained in Section 21(4) of the MCOC Act, 1999 would not be attracted. It was submitted that no case for an offence punishable under Section 307 of the Penal Code has at all been made out.

9. In opposition to this, Ms. Rao, the learned APP, stoutly resisted the prayer for bail. It was submitted that the applicant has been specifically named as a member of the unlawful assembly and even an overt act has been attributed to the applicant. Ms. Rao submitted that there is material to show that co-accused Avan Chavan and the members of his gang have created a reign of terror. The fact that the applicant has not been implicated alongwith Avan Chavan in any of the crimes is not of decisive significance. Therefore, the applicant does not deserve to be enlarged on bail.

10. From the perusal of the allegations in the FIR as well as the statements of witnesses it becomes evident that the role

attributed to the applicant is that of being a member of the unlawful assembly and giving a push to the first informant. *Prima facie* it does not appear that the applicant was armed with any weapon. It is trite that an overt act is not necessary if a person is arraigned as a member of an unlawful assembly in prosecution of the common object of which the offences are committed. The question that, however, arises for consideration is, whether the offence punishable under Section 307 of the Penal Code is *prima facie* made out. From the perusal of the injury certificate of the first informant, his father and mother, it appears that the first informant and his mother had sustained blunt traumas only. Yashwant, the brother of the first informant had sustained two CLWs, one below chin and the other over right side of the jaw by a sharp weapon. The father of the first informant had sustained a lacerated wound on the right hand. In the circumstances of the case, the question as to whether an offence punishable under Section 307 of the Penal Code is made out would be a matter for adjudication at the trial.

11. In any event, the role of assault by means of any weapon has not been attributed to the applicant. The alleged confessional statement of Samadhan Waghmare (Exhibit 'C' to the affidavit-in-reply), *prima facie* appears to be exculpatory.

The confessional statement, also indicates that in the scuffle that had ensued, the applicant and co-accused Santosh had sustained injuries. In the totality of the circumstances, whether the applicant was also animated with the common object of attempt to commit murder of the injured would again be a matter for trial.

12. This leads me to the interdict contained in Section 21 of the MCOC Act, 1999. It is true that the requirement of more than two charge-sheets is qua the organized crime syndicate and not each person who is alleged to be the member of the organized crime syndicate. In the case at hand, co-accused Avan Chavan is stated to be the gang leader. Four crimes apart from the subject crime seem to have been registered against the co-accused Avan Chavan. Apart from the subject crime, the applicant is arraigned in CR No.14/2019 registered with Tilak Nagar Police Station, for the offences punishable under Sections 452, 324, 504 and 506 read with Section 34 of the Penal Code. However, it is not the case of the prosecution that the applicant has been arraigned as a co-accused alongwith Avan Chavan or any other member of the syndicate. It is well recognized that it is the nexus of the person, who is alleged to be a member of the organized crime syndicate with the syndicate, that is the

crux of the offence. *Prima facie* in the case at hand, there does not seem to be material to establish such nexus between the applicant and the alleged organized crime syndicate. I am, therefore, impelled to hold that there are reasonable grounds to believe that the applicant may not be guilty of the offence punishable under MCOC Act. The antecedents of the applicant are also not such that the Court may not draw an inference that the applicant will not indulge in the offences punishable under the MCOC Act, 1999, if released on bail.

13. The applicant was arrested on 19th December, 2020. The period of incarceration of the applicant is also significant. The Court is informed that charge has yet not been framed. Having regard to the large pendency of cases it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the applicant.

14. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant be released on bail in CR No.407 of 2020, registered with Deonar Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

- (iii) The applicant shall mark his presence at Deonar Police Station, Mumbai, on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not 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.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court

shall not be influenced by any of the observations made hereinabove.

Application disposed

[N. J. JAMADAR, J.]