

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

ANTICIPATORY BAIL APPLICATION NO. 3094 OF 2022

Pradip Arun Padwal

..Applicant

Versus

The State of Maharashtra

..Respondent

Mr. Ashok M. Saraogi for Applicant.

Ms. Pallavi N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 10 JANUARY 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.960 of 2021 registered at Chakan Police Station, on 09.08.2021, under sections 395, 397, 387 and 341 of the Indian Penal Code, under sections 3, 25, 4 and 27 of the Arms Act, under sections 37 and 135 of the Maharashtra Police Act and under sections 3 and 7 of the Criminal Law Amendment Act. Subsequently, Sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA Act') were applied by granting permission U/s.23(1)(a) of the said Act vide the order dated 17.11.2021. The investigation was carried out and

the charge-sheet was filed with the sanction order U/s.23(2) of the said Act dated 03.02.2022. The applicant is still not arrested and has preferred this anticipatory bail application.

2. Heard Shri. Ashok Saraogi, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The F.I.R. is lodged by the first informant on 09.08.2021. He has stated that, he was having a small pan shop/stall. He had given it on rent to his friend. He was knowing the accused Santosh Manjre and Sainath Raut. According to him, they were committed the offences and used to extort the money from various stall owners. But because of their terror nobody used to make complaints before the police. About two months prior to lodging of F.I.R. on 09.08.2021, the informant was told by one of his friends that the accused Santosh was planning to commit murder of that friend. Accused Santosh and Sainath were demanding Rs.1000/- per month as extortion but the informant used to refuse to pay that money.

4. On 08.08.2021, at about 8.00p.m. the informant was

at Savardari phata and was talking with his friends 'JP' and 'SB' (the identity of the witnesses is not mentioned to protect their interest). The accused came there in a four wheeler. There were about 10 accused. Santosh and Sainath were amongst them. Santosh was having pistol and a sickle. Sainath was having a sickle. The other three unknown persons were having wooden sticks. Santosh aimed pistol at the informant. He tried to run away. The others caught him. The three persons having wooden sticks gave blows to the informant. His friends JP and SB came to save him, but they were also assaulted by the accused. Santosh removed gold chain from JP and Sainath removed chain from SB. Then they went away from the spot. On this basis the F.I.R. is lodged.

5. The informant gave his supplementary statement on 09.08.2021 itself. In that statement, he gave the names of seven other accused including the present applicant. According to him, those accused had come there on two wheelers. Some of them were carrying the sickle and the wooden sticks. All of them caught hold of the informant and then the accused Santosh, Aakash and

Narayan assaulted him with wooden sticks. His friends were assaulted by Santosh and Sainath with the sickles. The informant stated that, while lodging the F.I.R. he was scared and, therefore, names of those accused were not mentioned.

6. The investigation was carried out and the statements of various witnesses were recorded. There are more than 10 eye witnesses whose statements are recorded during the investigation. All these statements are recorded on 09.08.2021 itself and all of them have stated about the presence of the present applicant along with the other accused. All these witnesses have stated that the applicant had come to the spot with the main accused Santosh and Sainath when the incident had taken place. Their statements are consistent. The statements of injured eye witnesses SB and JP are also consistent. Both of them have named the present applicant as he had come to the spot with other accused. There are injury certificates regarding the injuries suffered by the informant and his friends. Those injuries show that the incident as narrated by the eye witnesses had in fact taken place.

7. Learned counsel for the applicant submitted that, he is falsely implicated. His name is not mentioned in the F.I.R. He is subsequently mentioned in the supplementary statement of the first informant. The applicant is resident of the same locality and he is in business of laundry. Therefore, he was knowing the other people in the locality, but he was not a member of any gang. There is no other antecedents against him. On the other hand, the first informant has many cases against him. The F.I.R. mentions names of only two persons. Subsequently, the names of other accused are introduced. There is no specific role attributed to the present applicant. Though, at some place the informant had tried to state that the applicant was carrying a sickle, but this information was told to him by others. There is no statement of any witness who had actually seen the applicant carrying the sickle. The applicant is willing to co-operate with the investigation. His custodial interrogation is not necessary.

8. Learned APP opposed this application. She submitted that the offence is under section 3(1)(ii) and 3(4) of the MCOC Act and, therefore, there is bar U/s.21(3) of the said Act for grant

of relief U/s.438 of the Cr.p.c. She submitted that the requirement for invoking the provisions of MCOC Act are that there has to be more than one charge-sheets involving the offence punishable for more than three years of which the cognizance is taken by the competent courts. It is not necessary that such offence should be registered against a particular individual. In this case there are more than one charge-sheets within the preceding 10 years. There are seven such offences against the accused Santosh, five such offences against Vitthal Pikle, two offences against Akash Shelke. The list of those offences are mentioned at page 284 at Exhibit-G of the affidavit in reply filed by the learned APP. Thus, according to her, the requirements of the MCOC Act are satisfied. She submitted that the applicant was a member of the gang. The applicant had come at the spot with others and he was a member of that unlawful assembly. She submitted that, there are statements of the eye witnesses showing that he had come to the spot along with others. The offence was collective effort by all the members of the gang. Therefore, considering the bar U/s.21(3) of the said Act, this application may not be allowed.

9. I have considered these submissions. As is mentioned earlier, there are more than 10 eye witnesses and all of them have given their statements immediately on 09.08.2021 itself. All of them have consistently stated that the applicant had come to the spot along with all the other accused. After that the informant and his friends were assaulted and the gold chains were forcibly taken from the informant's friends. The offences of extortion and robbery are made out from the material available in the charge-sheet. The orders passed U/s.23(1) and 23(2) of the MCOC Act show that they are passed by the competent authorities and the provisions of the MCOC Act were invoked following the due procedure of law. Though, there is no other offence registered against the applicant, however, since the other members as mentioned earlier had such offences registered against them of which the cognizance was taken by the competent courts, the requirements of the provisions of the MCOC Act are satisfied. A reference can be made to the Judgment in the case of *Kavitha Lankesh Versus State of Karnataka and others*¹ in support of this proposition.

1 (2022) 12 Supreme Court Cases 753

10. Considering this discussion, it is clear that the offence involves provisions of the MCOC Act and, therefore, there is direct bar U/s.21(3) of the said Act for grant of anticipatory bail order. With a result, no relief can be granted in this application.

11. The application is dismissed.

(SARANG V. KOTWAL, J.)