

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

ANTICIPATORY BAIL APPLICATION NO. 3656 OF 2023

Chikya @ Mitesh Santosh Pardeshi	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Bhushan U. Deshmukh for Applicant.
Ms. Sharmila S. Kaushik, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 2 JANUARY 2024

PC :

1. The applicant is seeking anticipatory bail in connection with C.R.No.302 of 2023, registered at Upnagar police station, Nashik city, on 25.07.2023. The F.I.R. was lodged U/s.307, 323, 395,504, 506 and 427 of the I.P.C., Sections 4 and 25 of the Arms Act and U/s.135 of the Maharashtra Police Act. Subsequently, the provisions of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act') were applied on 29.07.2023 and the prior approval for investigation under the MCOC Act was given in respect of Section 3(1)(ii), 3(2), 3(4) and 3(5) of the MCOC Act.

2. Heard Shri. Bhushan Deshmukh, learned counsel for the

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applicant and Ms. Sharmila Kaushik, learned APP for the State.

3. The F.I.R. is lodged by the first informant on 25.07.2023 in respect of the incident which had taken place around midnight between 24.07.2023 to 25.07.2023. The informant was having a four wheeler and he used to park it in front of his house. On 24.07.2023, at around 11.30p.m. to 11.50p.m. the informant returned from his office. He was about to park his car in front of his house. Suddenly, 10 persons came on four motorcycles. They asked the informant to get down. One of them told him that, he was Bashibhai and slapped him. He was wielding a sharp weapon. He told the informant to give money. The informant refused. He tried to run away. Bashibhai told his companion named Rohan and Satyam to finish him. As the informant was trying to run away, one of them caught him. Rs.2200/- were removed from his pocket at the point of a sharp weapon. They threatened him and told him not to inform the police about Bashibhai's gang. Bashibhai tried to give a blow with the weapon on the informant's head. He evaded that blow and somehow rescued himself. Bashibhai and Roshan broke windscreen of the informant's car. Because of the

commotion, the people in the locality gathered there. The accused threatened them and went away. While going away, they damaged other cars. The F.I.R. mentions six cars which were damaged. The first informant was told by others in the locality regarding names of the accused. One of the accused was the present applicant. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that the F.I.R. does not describe the applicant's presence at all. There is no role attributed to him. The F.I.R. is based on the information supplied to the informant by the others. The applicant is a young student. He is 20 years of age. He is falsely implicated. He submitted that, though there is bar U/s.21(3) of the MCOC Act to grant anticipatory bail, depending on the facts, if the offence under MCOC Act is not made out, then anticipatory bail can be granted. In support of his contention, he relied on the order passed by a single Judge bench of this Court on 11.12.2015 in Anticipatory Bail Application No.1642 of 2015. Learned counsel submitted that, this is the only charge-sheet filed against the present applicant and, therefore, requirement of more than two charge-sheets for

application of MCOC Act is not fulfilled; so far as the present applicant is concerned.

5. Learned APP strongly opposed this application. She produced the investigation papers before me. She submitted that the offence under the MCOC Act is made out. The gang has created terror in the area. There is bar U/s.21(3) of the MCOC Act for granting anticipatory bail. She relied on the statements of the other victims, as well as, the confessional statements recorded of two accused U/s.18 of the MCOC Act. Learned APP submitted that, there are more than two charge-sheets against the gang leader having punishment of more than three years; of which the cognizance is taken by the competent court.

6. I have considered these submissions. The prior approval U/s.23(1)(a) of the MCOC Act was granted on 29.07.2023 by the Special Inspector General of Police and Commissioner of Police, Nashik city. The approval mentions names of seven accused who were arrested and two accused who were absconding. The present applicant and Gaurav Mukne were absconding. The other arrested

accused were Bashi @ Shivam Behnwal, Nemya @ Roshan Pawar, Aman Verma, Bhaiyu @ Sattyam Dhenwal, Roshan Rathod @ Piyush Khode, Sudhanshu Baid and Mohij Shaikh. The prior approval mentions that more than one charge-sheet having prescribed punishment of three years or more had been filed during preceding 10 years against the active members of the said organized crime syndicate and the competent courts had taken cognizance of the same. Bashibhai is described as the gang leader. The investigation papers included the statements of other victims. Their statements mention that, one of the victims knew Bashibhai. He had threatened these victims. He described that, Bashibhai addressed one of his associates as 'Chikya'. That victim's car was also damaged. The other victims also referred to Bashibhai and his associate named Chikya.

7. The investigation papers included the telephonic call records of the gang members. There are 17 calls exchanged between the applicant and the gang leader Bashibhai. The applicant had 36 calls with another gang member Piyush Khode. He had 137 calls with the other absconding accused Gaurav

Mukne. He had 7 calls with another gang member Aman Verma. This is another indication that, he was closely associated with all the gang members. Apart from these circumstances, there are confessional statements recorded U/s.18 of the MCOC Act of the co-accused Mohij Shaikh and Aman Verma. Their statements sufficiently corroborate the F.I.R. and the incident which had taken place on 24.07.2023. The applicant was having his vehicle. He was all along with the other gang members and he also had taken part in the discussion when the gang members decided to commit these offences.

8. Thus, at this stage, there is prior approval U/s.23(1)(a) of the MCOC Act. There are confessional statements of co-accused. There are corroborating statements of the victims. In short, there is strong material against the present applicant and at this stage, it cannot be recorded that the offence under the MCOC Act is not made out against the applicant.

9. Learned counsel for the applicant submitted that, there is no other charge-sheet filed against the petitioner and hence,

provisions of MCOC Act cannot be invoked against him. This submission is not correct. Hon'ble Supreme Court has dealt with this issue in the case of ***Kavitha Lankesh Versus State of Karnataka and others***¹. It is observed in paragraph 30 of the said judgment that, "As regards offences punishable under Sections 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organised crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organised crime syndicate." Hon'ble Supreme Court was dealing with Karnataka Control of Organised Crimes Act, 2000. The same principles are applicable to the present case.

10. There is clear bar U/s.21(3) of the MCOC Act in granting anticipatory bail U/s.438 of the Cr.P.C. The facts in the order passed in A.B.A.No.1642 of 2015 are completely different and the learned counsel's reliance on the said order is not correct. Apart from this, the offence is quite serious. The very nature of the

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offence shows that the gang members had created terror in the locality and they have damaged many cars. They have committed extortion. The applicant is absconding. His custodial interrogation is absolutely necessary. No case for grant of anticipatory bail is made out.

11. The application is rejected.

(SARANG V. KOTWAL, J.)