

IN THE COURT OF ADDL.SESIONS JUDGE AT VAIJAPUR
DISTRICT AURANGABAD

MHAU040009202024



Special Case No. 429/2024
State of Maharashtra Vs. Sham Bhosale
and others.
Crime No. 296/2023, P.S. Shivoor
Offence Pun.u/s 395, 397 of IPC
and u/s 3 (1) (i) (ii), 3(2), 3(4) of The
MCOC Act.

ORDER BELOW EXH.09

01] This is an application filed by accused Raosaheb Bhimraj Pagare under section 483 (corresponding to section 439 of Code of Criminal Procedure) of BNSS for releasing him in crime No.296/2023 under section 395, 397 of the Indian Penal Code and u/s 3(1)(ii), 3(2), 3(4) of MCOC Act registered with police station, Shivoor.

02] The investigation officer by filing his reply vide Exh. 14 has strongly opposed the application on the following grounds :-

- a] That the accused is habitual offender.
- b] That there is possibility of commission of serious offence.
- c] That there is possibility of tampering with prosecution witnesses.

03] Heard learned counsel for the accused and learned APP for the State. Perused the application, reply and the charge-sheet. It is the case of the prosecution that the informant Vishnu Pandharinath Surashe lodged the report that on 08.11.2023 he along with his wife and son were sleeping on platform in front of their house in their field after taking meal at about 09.00 p.m. At about 10.30 to 11.00 p.m., he woke up after hearing the cry of his son and he saw that 2-3 persons aged about 30 to 35 years were beating to his son. Those persons were having iron rods, wooden sticks and the knife. They assaulted his son on head and caused injury on his head and left knee. They were scuffling with his son and at that time one of them caused injuries to him by assaulting with an iron rod. His son ran away from the spot. On hearing the noise of quarrel, his wife woke up. Those 2-3 persons also assaulted her on her hands by means of iron rod and snatched her wearing ornaments by threatening her with knife. They snatched one mobile phone also. It is further alleged in the report that 7-8 persons aged about 30 to 40 years assaulted the informant, his wife and son with iron rods and by threatening his wife snatched ornaments and mobile worth of Rs.45,000/-. On the basis of said report, an offence vide crime No.296/2023 under section 395, 397 of IPC have been registered against unknown persons.

04] During the course of investigation, on 25.01.2024 Deputy Superintendent of Police informed the learned Magistrate about the addition of section 3(1)(ii), 3(2), 3(4) of MCOC Act in the above said crime.

05] The applicant is claiming the present application to be his first application for bail. However, the claim of the applicant is false as the applicant had moved Criminal Bail Application No.07/2024, which had been rejected by my learned predecessor vide order dated 01.02.2024. Therefore, on the ground of making false claim itself, the present application is not maintainable. However, looking to the fact that the provisions of MCOC Act were subsequently applied to the crime, I am taking up this application for decision on its own merits.

06] It is well settled that it is incumbent on the part of the Court before granting of bail to any person accused of an offence punishable under MCOC Act, to record satisfaction that there are reasonable grounds for believing that the applicant is not guilty of such offence and that the applicant is not likely to commit any offence while on bail. In the case in hand, it is the submission of learned counsel for applicant that the applicant has been arrayed as an accused only on the basis of suspicion and therefore, the applicant deserves to be released on bail. On considering the material available on record, I do not find any substance in the submission of learned counsel for the applicant. The co-accused namely Sham Badod Bhosale and Pandurang Bharam Bhosale disclosed before the police that at the time of commission of alleged offence, the present applicant was with them. Not only this, the informant has also identified the present applicant in identification parade. Thus, there is prima-facie material on the record against the present applicant showing his involvement in the crime. Consequently, the present applicant cannot be released on bail.

07] The learned counsel for the applicant has relied upon following citations and submitted that in view of the citations, applicant is entitled to bail:

- 1] Satish Appa Ithape @ Satish Appa Patil Vs. The State of Maharashtra reported in 2023 ALL MR (Cri) 1517.
- 2] Bhupendra @ Golue s/o Suryakant Borkar Vs. State of Maharashtra reported in 2017 ALL MR (Cri) 1561.
- 3] Dattatray Krishnaji Ghule Vs. State of Maharashtra reported in 2007 ALL SCR 609.
- 4] Devram Gulab Ghogare Vs. State of Maharashtra reported in 2022 ALL MR (Cri) 2754.
- 5] Samir Bashir Shaikh Vs. State of Maharashtra reported in DLR (Cri) 2022-1714.
- 6] Sk. Mehmood Sk. Mehboob Vs. State of Maharashtra reported in 2015 ALL MR (Cri) 3124.
- 7] Ayush Naresh Meshram Vs.State of Maharashtra reported in DLD (Cri) 2022-1463.
- 8] Shahrukh @ Kasai Shaikh Akram Vs.State of Maharashtra reported in 2024 ALL MR (Cri) 1912.
- 9] Sk. Mehmood Sk. Mehboob Vs.State of Maharashtra decided on 8.8.2013 in Criminal Application (BA) No.467 of 2013 with Criminal Application (BA) Nos. 475, 113 of 2013 by the Hon'ble Bombay High Court (Nagpur Bench)
- 10] Aakif Ateeque Nachan Vs. The State of Maharashtra decided on 13.8.2013 in Criminal Application No.1157 of 2013 by the Hon'ble Bombay High Court.

08] On perusal of the above referred citations, I do not find that any of the citation is helpful to the applicant. I therefore, proceed to pass following order:

ORDER

Application Exh.09 is hereby rejected.

Date : 13-11-2024

(R.D.Gadwe)
Addl. Sessions Judge-1, Vaijapur

CERTIFICATE

I affirm that the contents of this P.D.F file order are same word to word, as per the original order.

Name of the stenographer : Balaji N. Kuntalwar

Court Name : District Judge-1 & Vaijapur

Date : 13-11-2024

Order signed by the

Presiding Officer on : 13-11-2024

Order uploaded on : 13-11-2024