

MHKO010027232021



Order below Exh. 17 in Special Case No. 172 of 2021.

1. This is application filed by accused No. 9 Sairaj Dipak Jadhav under section 439 of Cr.P.C. as accused is arrested in Crime No. 123 of 2021 under Section 307, 120-B, 323, 143, 147, 148, 341, 427, 188, 269, 270, 504, 506 read with section 149 of the Indian Penal Code, under Section 4 and 25 of the Arms Act, Section 51 (b) of Disaster Management Act, Section 2, 3 and 4 of Epidemic Diseases Act, Section 11 of Maharashtra Covid-19 Regulations 2020 and under Sections (3) (1) (ii), 3 (2), 3 (4) of Maharashtra Control of Organized Crime Act (In short “MCOC Act”) registered with Rajarampuri Police Station, Kolhapur.

2. It is the case of the prosecution that Saddam Abdul Sattar Mulla the informant went to his hotel namely Hotel Orange on 6.4.2021 at about 11 a.m. After discharging daily routine work he closed his hotel and at about 11.10 p.m. he along with his friends Sad Mujawar were returning back to his house through four wheeler car. When he was passing Shahu

Toll Plaza he saw accused No. 1 Gendya @ Rushikesh Chougule, accused No. 2 Aasu Shaikh were coming on motor cycle by his direction. Accused No. 1 asked informant to stop there and he will kill him and finish him. Meantime other accused, accused No. 3 Arjun Thakur, accused No. 4 Nitin @ Bob Dipak Gadiyal, accused No. 5 Viraj @ Jabya Vijay Bhosale, accused No. 6 Pankaj Powar, accused No. 7 Prasad Suryavanshi, accused No. 8 Vishal Wadar, accused No. 9 Sairaj Dipak Jadhav, accused No. 10 Rohit Bajrang Salokhe and other 2 to 3 unknown persons came on three motor cycles. All they were members of S.T. Gang and there is terror of all these accused in their locality. They are having no sources of income and they are engaged in business of creating terror in the locality and extract money from the people. Due to terror of accused nobody coming forward to lodge complaint against them. They behaved in the locality armed with deadly weapons sword, scythe etc. The people used to close the doors of their houses by seeing these accused. Informant also got frightened by seeing all these accused at the spot and was passing towards Kolhapur side in high speed by his vehicle, however accused chased his car and at about 11.20 p.m. accused No. 1 and 2 restrained the four wheeler vehicle of the informant by bringing their two wheeler in front of his car. Accused Pankaj Powar dragged the informant out of his car. Meantime other accused also reached at said spot. One of the

accused broken the glasses of car of informant by hockey stick. Accused No. 1 told to informant “आमचा धंदा बंद करायचा आहे काय आमच्या नादाला लागला का” and inflicted blow of scythe on forehead and caused serious injuries. Accused No. 2 Aasu Shaikh told that Ashish Patil friend of informant is a informant in case filed against them under the provisions of MCOC Act. Accused No. 4 told that “ हा आशिषचा मित्र आहे यानेच आशिषला मोक्या मध्ये फिर्याद द्यायला सांगितली आहे, याला आज जिवंत सोडायचे नाही.” Accused No. 2 inflicted blow of sword on neck of informant, but he avoided said blow. Accused No. 3 and other accused assaulted informant by means of hockey sticks. Accused No. 4 also assaulted informant by means of hockey stick. The other accused also broken the glasses of the four wheeler vehicle of the informant, hurled abuses to him, assaulted him. Sad Mujawar the friend of informant rescued him from the clutches of accused. The informant sustained bleeding injuries. There was shouting in high voice, therefore, accused fled away from the spot. Then Sad Mujawar called Mosin and then they took informant to City Hospital, Kolhapur for medical treatment. He was unconscious when admitted in the hospital, after regaining consciousness his complaint has been recorded. On the report filed by the informant above referred crime has been registered against the accused.

3. Accused No. 9 was arrested on 15.4.2021. He was remanded to PCR and then he was remanded to MCR. Hence, accused No. 9 filed this application for granting bail.

4. Following points arise for my determination and I have recorded my findings against them for the reasons given thereunder :-

<u>Points</u>	<u>Findings</u>
1. Whether the applicant has made out case for grant of bail ? –	No.
2. What order ? –	As per final order.

- REASONS -

As to point no.1 and 2 :-

5. Learned counsel Mr. P. D. Durge representing to accused No. 9 submitted that no prima facie case is made out against the accused for the charges levelled on him. Medical certificate does not disclose that informant sustained injury by fist and blows. The clothes which were alleged to have been on person of the accused on the day of alleged incident have been seized on 15.4.2021. No blood stains found on clothes of

accused. The sanctioning authority had not applied its mind for approval of invoking provisions of MCOC Act. There is no recovery or discovery at the instance of this accused. Since last 7 months he is behind bar. This accused is not member of crime syndicate and he is having no nexus with gang. He is innocent, not committed any offence alleged against him. He is ready to obey the conditions. He further submitted that the history stated before Medical Officer by the informant shows that he sustained injuries due to pelting stones whereas recital of FIR shows that he was assaulted by sword, scythe and hockey sticks. No injury of sharp edged weapon found by the Medical Officer on medical examination of informant. Though names have been stated in the FIR identification parade has been conducted. Witnesses Saddam and Shoukat not stated names of this accused as an assailant. The entire documents filed along with chargesheet shows that deliberately accused implicated in false crime. The provisions of MCOC Act would not attract.

6. The learned counsel Mr. P. D. Durge for the accused placed his reliance on decision in case of **Santosh Dattatray Jamune Vs. The state of Maharashtra – Bail Application No. 832 of 2015 decided on 4.8.2015 by the Hon'ble Bombay High Court**, wherein it is observed by the Hon'ble Bombay High Court that, *it is expected in the test identification parade that the*

witness should give reason for identification and mere identification is not sufficient. Besides this no evidence is seen against the applicant/accused. There is no recovery as well. Under such circumstances I am inclined to grant bail.

7. The learned counsel Mr. P.D. Durge placed his reliance on decision in case of **State of Maharashtra Vs. Shiva @ Shivaji Ramaji Sonawane 2015 ALL MR (Cri) 3310 (S.C.)**, wherein Hon'ble Apex Court held that -

“The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA. Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court.”

8. The learned counsel Mr. Durge for the accused placed his reliance on decision in case of **Bhupendra @ Golu S/o. Suryakant Borkar Vs. State of Maharashtra – 2017 ALL MR (Cri) 1561**, wherein Hon'ble Bombay High Court held that -

“It has also to be held that previously registered offences must have some commonness with the offences registered in the present crime. If they do not bear any similarity or

commonality to the present crime, they could not be taken into consideration for denying the relief of bail.”

9. The learned counsel Mr. P.D. Durge placed his reliance on decision in case of **Sanjay Chandra Vs. CBI – AIR 2012 Supreme Court 830**, wherein Hon’ble Apex Court held that -

“In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, ‘necessity’ is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of

bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

10. The learned counsel Mr. P.D. Durge placed his reliance on decision in case of **Prabhakar Tewari Vs. State of Uttar Pradesh -AIR Online 2020 SC 96** wherein it is held by the Hon’ble Apex court that, *several criminal cases are pending against the accused itself is not a ground to refuse the bail.*

11. The learned counsel Mr. P.D. Durge placed his reliance on decision in case of **Ibrahim @ Munna Salim Shaikh Vs. State of Maharashtra 1996 Cr. L. J. 1419**, wherein it is held by the Hon’ble High Court that, *criminal history of the accused could not be a sole ground to refuse bail.*

12. The learned counsel Mr. P.D. Durge placed his reliance on decision in case of **Golappa Avana Naik and others Vs. The State – 1968 Cri. L. J. 929** and on decision in case of **Krishnegowda Vs. State of Karnataka AIR 2017 Supreme Court 1657** and **Shankar Shridhar Kavale and others Vs. State of Maharashtra 1998 Cri. L. J. 4491** wherein it is held by the Hon’ble Bombay High Court and Hon’ble Apex Court held

that, when there is discrepancy in medical evidence and ocular evidence, such evidence is unreliable.

13. Placing reliance on these decisions the learned counsel for the accused No. 9 submitted that there is no prima facie evidence against accused in respect of his complicity in alleged crime. Hence, urged for granting bail.

14. As against this learned Spl. P. P. Mr. V. H. Shukla submitted that complaint has been lodged by informant Abdul Sattar Mulla. Recitals in it clearly demonstrates that name of this accused No. 9 has been stated at the time of lodging the report. The recitals further shows that this accused is a member of organized crime syndicate namely ST Gang headed by accused No. 1. They are engaged in business of creating terror and extracting money from the people. Nobody coming forward to lodge complaint against them. Further recitals of complaint demonstrates that the accused formed an unlawful assembly and in prosecution of common object of said unlawful assembly restrained the car of the informant, dragged him out of the car and assaulted him by deadly weapons sword, hockey sticks etc. Though the history before Medical officer shows that he has sustained injury due to pelting stone, the history might have been given by the relatives or friends of the victim as he was unconscious. Hence, merely on the said ground it cannot be

said that there is no prima facie case. On the contrary, the recitals of the FIR, statements of witnesses clearly demonstrates the complicity of the accused in the crime registered against him. Not only this but list of criminal cases pending against the accused has been filed along with chargesheet, it clearly goes to show the complicity of the accused in serious offence under the provisions of MCOC Act. Thus, in view of the provisions of Section 21 of the MCOC Act no bail can be granted to such accused. Hence, urged for rejecting application.

15. After hearing submissions of both sides I have evaluated the chargesheet and the documents filed along with chargesheet. The recitals of the FIR clearly demonstrates that the name of this accused is stated in the complaint itself, role played by this accused is also specifically stated by the informant. Not only this but the other witnesses Sad Shoukat Mujawar, statement of Mosin Abdul Sattar Mulla, statement of Toufiq Salim Gurghunti, statement of Arif Abu Akkiwate, Mahesh Narayan Pawar supports the recitals of the FIR and clearly demonstrates the complicity of this accused in the crime registered against him. Identification parade panchanama also clearly demonstrates that witness Sad Mujawar identified this accused in the identification parade conducted as on 18.8.2021. Not only this but recovery panchanamas and other panchanamas

also demonstrates the complicity of this accused in this crime. Not only this but the report of investigation agency demonstrates that he is the head of the organized crime syndicate. Several criminal cases are pending against him. Hence, in view of the bar contained in Section 21 (4) of the MCOC Act he cannot be released on bail. Hence, the ratio laid down in cases cited supra relied on behalf of the accused not helpful to him in this case as there is sufficient prima facie evidence in respect of his complicity in this crime. Hence, I answered point No. 1 in the negative and proceed to pass following order :-

ORDER

1. Application is rejected.

Date :21.1.2022.

**(B.D.Shelke)
Special Judge (MCOCA),
Kolhapur.**