

MHKO010027232021



Order below Exh. 18 in Special Case No. 172 of 2021.

1. This is application filed by accused No. 10 Rohit Bajrang Salokhe 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 फिराई दयायला 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. 10 was arrested on 15.4.2021. He was

remanded to PCR and then he was remanded to MCR. Hence, accused No. 10 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. Heard both sides and also gone through the written notes of argument Exh. 26 filed by the learned counsel for the accused No. 10. Learned counsel Mr. M. P. Nagaonkar representing to accused No. 10 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 acquitted in Sessions Case No. 129 of 2020 which was pending against him. The copy of said judgment is filed on record at Exh. 19/1. He was employee in Vishwakarma Plywood and Glass Centre, did work of carpentry in Sangli District Central Co-operative Bank, Branch Chikli, Digraj, Walekhindi, Shirala. The certificate dt. 24.12.2021 issued by his employer placed on record at Exh. 19/2. It shows that he is having source of income and doing carpentry work. The wages of the applicant have been paid by his employer depositing the same in his Bank account maintained with Union Bank of India. The copy of statement of Bank account is also placed on record at Exh. 19/3. These documents falsifies the contention of prosecution that the accused has no other source of income and he is engaged in organized crime syndicate and extracting money from the people as alleged. He also placed on record the copy of order dt. 24.8.2021 in Criminal Bail Application No. 697 of 2021. As per his submission earlier bail application No. 697 of 2021 has been rejected on the ground that investigation is in

progress. Now the investigation is completed, chargesheet is filed. Nothing remained to be recovered or discovered. 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. He further submitted in his written notes of argument that if the story of complainant is accepted then he was injured at about 11.20 p.m. at the hands of some accused. In case papers nowhere mentioned about unconsciousness of the complainant but he stated that he was unconscious, which cannot be believed. If injuries are grievous and serious he would not have been discharged within 24 hours from the hospital. There is delay in the FIR. There is inconsistency in the ocular statement and medical certificate. 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. He is totally innocent, not committed any offence alleged against him. No prima facie case made out for invoking provisions of MCOC Act but he is implicated falsely in this case. He is ready to obey

the conditions. Hence urged for granting bail.

6. 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. 10 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.

7. 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. Not only this but recovery panchanamas and other panchanamas also demonstrates the complicity of this accused in this crime. Several criminal cases are pending against the co-accused. The documents placed on record by the accused No. 10 not suffice to gather that the provisions of the MCOC Act would not attract against him. Hence, in view of the bar contained in Section 21 (4) of the

MCOC Act he cannot be released on bail. There is sufficient prima facie evidence in respect of his complicity in this crime. Thus, provisions of MCOC Act attracts against him. 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.**