**MHKO010027232021**

**ORDER BELOW EXH. 93 IN SPECIAL (MCOCA)CASE No.172/2021**

The accused No.4 Nitin @ Bob Deepak Gadiyal was arrested on 06/04/2021 in C.R.No. 123/2021 registered in Rajarampuri Police Station under Section 307, 120B, 323, 143, 148, 149, 341, 427, 504, 506, 188, 269, 270 of the Indian Penal Code, 1860 read with Section 4, 25 Arms Act and Section 51(b) of Disaster Management Act and Section 2, 3 and 4 of the Epidemic Diseases Act, Section 11 of COVID-19 Regulations 2020 and Section 3(1)(ii), 3(2) and 3(4) of MCOC Act. He has filed this application for bail under section 439 of the Criminal Procedure Code.

**2.** The Indictment of the applicant is that the informant Abdul Sattar Mulla was running a hotel and on 06/04/2021 at about 11.15 to 11.25 p.m. he was returning home by closing his hotel by the road from Shahu Toll Plaza to Kolhapur by his car. All the accused stopped his car in front of Hevan Pizza Stores by coming with deadly weapons like sword, hockey sticks, spade and wooden stick by four motorcycles. Accused No.2 Aasu gave a stroke of a hokey stick on the front glass of his car, accused No. 6 Pankaj Powar snatched him from the car, accused No.1 Gendya asked him as to whether he wants to stop their business and threatened saying that he should not come in their way and assaulted him by a spade in on the upper side of his left eye. Aasu told that the informant is the friend of Ashish and accused No.4 Nitin Gadiyal told that he has instigated Ashish to file complaint against them under MCOCA Act and tried to assault him by sword on his neck but he missed the blow. Other accused assaulted him by fist and kick blows and they caused damaged to his car. Thus, the crime was registered against the accused and they were arrested. The present applicant was arrested on 09/04/2021 and on initial remand to police custody, he has been remanded to judicial custody.

**3.** It is contended by the applicant that false crime has been registered belatedly after thought in the afternoon of the next day. He was not involved in commission of the crime. He has been falsely implicated in this crime after thought. The alleged incident was occurred during night and it was not possible for the informant to identify all the accused. The applicant was not knowing the informant and he was not in inimical terms with him. The applicant was never the member of Organized Crime Syndicate namely 'S.T. Gang' nor committed any offence being the member of such crime syndicate. Thus, the offences under MCOC Act are not attracted against the present applicant. The informant had sustained simple injuries but he has made exaggerated statements and on the basis of it, the crime u/s.307 of IPC has been registered. The sanction to prosecute the present applicant along with other accused for the offences under MCOC Act has been mechanically accorded. The investigation is practically completed no presence of the accused is required. The accused No. 7, 8, 9 and 12 have been released on bail and therefore, the accused is entitled to be released on bail on the ground of parity.

**4.** Shri. S.R. Shinde, the learned advocate for the applicant submits that the basic requirements to attract the offences under MCOC Act are absent in this case. There are criminal antecedents of the accused but that is not enough to hold that he is liable for the offence under MCOCA. The nexus between past criminal activities and present crime was also not established. There was nothing to show that past offences were committed by the applicant were committed as the member of or on behalf of organized crime syndicate.

**5.** The say of prosecution was called and the prosecution has resisted this application by filing say (Exh.104) and on that basis, Shri. V.H. Shukla, the learned PP submits that the applicant was found to be the member of organized crime syndicate and there was his active involvement in commission of the offences as the member of the said crime syndicate. As regards criminal antecedents, a list of previous crimes registered against the applicant has been given in the say which discloses that 5 crimes have been registered against the accused individually and he is an accused in 15 crimes commonly as the member of the organized crime syndicate. Secondly, according to the prosecution, other accused have given the confessional statements u/s.18 of the MCOC Act naming the present applicant and therefore, his involvement in the alleged incident is apparent. The informant has identified this accused to be one of the assailants. If the applicant is released on bail, he will indulge in similar crimes. He will pressurize the prosecution witnesses. Hence, he is not entitled to be released on bail.

**6.** Having anxiously considered the rival submissions, the provision of Section 21(4) of the MCOC Act would be applied for dealing with this application which lays down that no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond unless-

**a)** the Public Prosecutor has been given an opportunity to oppose the application of such release;

**b)** where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

**7.** Now, an opportunity has been given to the prosecution to oppose this application and the prosecution has opposed the same. Thus, the first condition has been satisfied. The second condition has two limbs. Firstly, there should be satisfaction of the Court that there are reasonable grounds to believe that the applicant is not guilty of the offence and secondly, there is no possibility that the applicant will commit any offence while on bail.

**8.** If, the material on record is considered, keeping in mind these two requirements, then it would be clear that the applicant has criminal antecedents as there material to show that the applicant was indulged in “continuing unlawful activity”. The definition of “Organized Crime” as given in Section 2(e) of the Act says that the organized crime means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

**9.** Perusing the investigating papers and the role of the present accused I commission of the alleged offence, there can hardly be any scope to say that he is not indulged in commission of the offence under MCOCA. Considering his criminal antecedents, there is no scope to say that he will not commit such offence if released on bail. The trial can be expedited and the delay was not because of the prosecution but because so may other reasons. Therefore, this ground is not available to the accused. Thus, I find no just ground for releasing this accused on bail. Hence, the following order.

**ORDER**

Bail Application is rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by Shivaji Ramchandra Salunkhe
Date: 2023.07.15 18:11:49 +0530

(**S.R. Salunkhe**)
Date: 15/07/2023 Additional Sessions Judge,
Kolhapur.