

MHKO010027232021

**ORDER BELOW EXH. 161 IN SPECIAL (MCOCA)CASE No.172/2021**

The accused No.1- Rushikesh @ Gendya Babaso Chougule was arrested on 08/04/2021 in C.R.No. 123/2021 registered in Rajarampuri Police Station under Section 307, 120B, 323, 143, 147, 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. This is his first bail application and he contends that no other bail application is pending in any other Court.

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 /applicant 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 on the upper side of his left eye. Aasu told that the friend of informant Ashish is his friend 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 7/4/2021 and on initial remand to police custody, he has been remanded to judicial custody.

3. It is contended by the applicant that he was not involved in commission of the crime and he has been falsely implicated in this crime after thought. The informant has criminal antecedents and there was rivalry between the informant and other accused. 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.

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. To lend support, the learned advocate has relied upon the judgment of the Hon'ble Bombay High Court in ***Shri. Girish Nayar Vs. The State of Maharashtra [2021 ALL MR (Cri) 1409]*** wherein, the criminal antecedents of the applicant were placed on record but which charge-sheets were considered for his prosecution under MCOC Act was not made clear. 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. Thus, it was held that that mere proof of past charge-sheets is not enough to attract the offences under MCOC Act. The investigation was completed and the applicant was in custody since last four years. The trial was not likely to commence within reasonable time. Thus, it was held that the case is fit to grant the bail.

5. The learned advocate for the applicant submits that the applicant is placed in better position. There is no specific role attributed to the present applicant in the alleged incident. It is alleged that the applicant assaulted the informant near his eye. He has given history of injury due to pelting stone. Such injury is not sufficient to attract the offence under Sec.307 of IPC. The alleged incident is not for the purpose of gaining any monetary benefit. Therefore, the offences under MCOCA are not prima facie attracted. All other accused including the alleged gang leader Sairaj Jadhav are released on bail. The applicant has criminal antecedents but those offences are of individual nature and not as the member of the organized crime syndicate. The trial is not likely to proceed in near future. Thus, according to the learned advocate, considering the guiding principles enunciated in above judgment, the applicant would be entitled to be released on bail and also on parity.

6. The say of prosecution was called and the prosecution has resisted this application by filing say (Exh.168) and on that basis, Shri. V.H.Shukla, the learned P.P. 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 the applicant is of criminal nature and he has committed crime while he was in jail. Secondly, according to the prosecution, the accused No.1 has given the confessional statement u/s.18 of the MCOC Act, admitting his involvement in the alleged incident. 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.

7. 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.

8. 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.

9. If, the material on record is considered, keeping in mind these two requirements, then it would be clear that the applicant has criminal antecedent but there is nothing on record to show that

previous offences were committed by him being the member of the organized crime syndicate. There is no 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.

10. The objective of gaining pecuniary benefits is completely absent in this case. The alleged incident has taken place due to *inter se* rivalry between the informant and the accused. The learned advocate for the applicant submits that the informant has sustained simple injury over his left eye. If it was caused by the weapon like spade, then it would have caused grievous injury. The alleged incident was taken place in dark at about 11.30 p.m. The complaint was lodged at about 9.30 p.m. on the next day. The reason behind the incident was not with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The informant was alleged to have been assaulted on the ground that he has instigated his friend Ashish to file complaint under MCOCA against the accused. There is no material to suggest that the applicant was the member of organized crime syndicate. As there is no sufficient material to *prima facie* hold that the applicant was the member of organized crime syndicate and he has been indulged in continuing criminal activity within the meanings of the definition of the said terms, the offences under MCOCA, there is reasonable doubt

whether the offences under that Act could be attracted. Thus, it appears that there are no prima facie reasonable grounds for believing that the applicant is guilty of the offences under MCOCA and he is not likely to commit any offence under MCOC Act, if released on bail. Now the investigation is completed and the chargesheet has been filed.

11. All the accused in this case were produced before the Court on earlier date. The case was fixed for framing charge. Most of the accused had yet not engaged their advocates. They were willing to engage private advocates and they were seeking some time for the same. Some of the accused, whose bail applications were rejected by this Court were submitting that they have applied for bail before the Hon'ble High Court and the charge may not be framed against them till decision on their bail applications. Under such circumstance, the trial of this case is not likely to commence in near future. The applicant has produced on record the marriage invitation card to show that the marriage ceremony of his sister is scheduled on 22/04/2024. Criminal antecedents of the applicant are not *per se* sufficient to deny the bail. Therefore, considering the ratios in above cited judgments, I hold that the applicant would be released on bail on certain conditions. Hence, the following order.

ORDER

1. Bail Application is allowed.
2. The applicant (accused No.1) Rushikesh @ Gendya Babaso Chougule, who is arrested in Crime No.123/2021 registered in Rajarampuri Police Station under Section 307, 120B, 323, 143, 147, 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. be released on bail on his furnishing P.R. of Rs.30,000/- with one surety of like amount on the following conditions :

- i) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the evidence;
- ii) The applicant shall not indulge in any offence;
- iii) The applicant shall not abscond and shall attend all Court dates;
- iv) Violation of any of the above conditions may entail a ground for cancellation of bail forthwith.

Date: 02/04/2024

(S.R. Salunkhe)
Additional Sessions Judge,
Kolhapur.