

MHKO010027232021**ORDER BELOW EXH. 39 IN SPECIAL (MCOCA)CASE No.172/2021**

The accused No.6 Pankaj Ramesh Powar, was arrested on 16/06/2021 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 stick and wooden stick by four motorcycles and stopped his car. On the ground of previous dispute with the informant, they caused damaged to his car and assaulted him by the weapons in their hands. Thus, the crime was registered against the accused and the investigation was started.

3. During investigation, it was disclosed that all the accused are the members of Organized Crime Syndicate namely 'Sairaj Dipak

Jadhav Gang' which is continuously indulged in criminal activities for financial gain and the informant was tried to be eliminated to establish supremacy of their gang. Hence, permission was asked from Competent Authority to prosecute the accused under MCOC Act. The permission was accordingly granted and after completing investigation, the chargesheet is filed against 13 accused. The present applicant was arrested on 16/06/2021 and since then, he is in jail.

4. It is alleged by the applicant that the applicant has committed no offence and he is falsely implicated in this case. According to him, there were only four cases pending against him prior to this offence which were the cases arose out of his individual acts and not as the member of Organized Crime Syndicate. From one of the cases he has been acquitted. The complainant himself is the habitual offender and several cases are pending against him. In fact, there was COVID-19 Pandemic and hotel business was closed. Therefore, the allegation of the complainant that on 06/04/2021, he was running hotel itself was false. The applicant has his permanent residence at Kolhapur and he has his movable and immovable property there. He will abide by all the conditions that would be imposed by this Court. Hence, he prays that he be released on bail.

5. The say of prosecution was called and the prosecution resisted this application by filing say (Exh.44) contending that there is no just ground to release the applicant on bail. This application was filed on 29/11/2022 and the prosecution filed its say on 12/01/2023. Since then, this application was kept for argument but nobody turned up to argue this application. Hence, on 18/01/2023 this application was kept for further order. The learned advocate for the applicant thereafter, filed his written arguments (Exh.53) on 13/2/2023. The

prosecution then argued this application and it is fixed for order.

6. The learned advocate for the applicant has relied upon the judgment of the Hon'ble Supreme Court in *Aatif Nasir Mulla Vs. State of Maharashtra [2005 Supreme (Bom) 1768]* wherein, it is held in Para-7, relying on the judgment of the Hon'ble Supreme Court in *Peoples Union for Civil Liberties Vs. Union of India [AIR 2004 SC 456]*, that provisions of Sec.49(7) of Prevention of Terrorism Act, 2002(POTA) have been add by way of exception and it means that after the expiry of one year after the detention of the accused for offences under POTA, the accused can be released on bail after hearing the Public Prosecutor under ordinary law without applying the rigour of Sec.49(7) of POTA. The learned advocate seeks to apply this principle to the present case which is under MCOCA, where there are different provisions under which the prayer for bail has to be considered.

7. The provisions of Section 21(4) of the MCOC Act would be applied for dealing with this application which lays down the non-obstinate clause 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 antecedents and he himself has admitted this fact. The Investigating Officer has reported that there were six crimes already registered against the applicant and there is direct evidence about his association with the Organized Crime Syndicate. The co-accused have named the applicant in their confessional statements recorded u/s.18 of the Act. Thus, there are no reasonable grounds put forth by the applicant to make this Court to believe that he is not guilty of such offences. Looking to the criminal antecedents of the applicant, it cannot be said that he is not likely to commit any offence, if released on bail.

10. Thus, none of the preconditions for granting bail have been established by the applicant. Therefore, there is no ground made out to release the applicant on bail where there is express bar u/s.21(4) of the MCOC Act to release him in absence of proof of such conditions. The application is devoid of merit and is therefore, liable to be rejected. Hence, the order.

ORDER

Bail Application is rejected.

(S.R. Salunkhe)

Date: 23/02/2023

Additional Sessions Judge,
Kolhapur.