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MCOC Special Case No. 737/2021
(CNR-MHPU01-014080-2021)

State of Maharashtra

Vs.

Bala @ Jagdish Popat Darade & Ors.

ORDER BELOW EXH. 32

1] By this application, the applicant – **Vijay Balu Gophane** is seeking regular bail under section 439 of Criminal Procedure Code read with Section 21 (4) of MCOC Act in connection with CR No. 430/2020 registered with Bhigwan police station, Pune for the offences punishable under Section 307, 397, 452, 427, 506, 34 of Indian Penal Code, u/s. 3 (25) of Arms Act and section 3 (1) (ii), 3 (4) of MCOC Act.

2] Read application, say given by the learned Spl. P.P. Heard both sides at length and gone through the charge-sheet.

3] **Brief facts :**

It is the case of Complainant that, on 30/11/2020 at 1.00 a.m. the co-accused – Bala Darade and Vijay Gofane with three unknown persons broke the door and entered the house and afterwards the accused started beating the Complainant with iron bar on his head and legs. After beating, the accused took the Titan watch and wallet containing Rs. 2500/-. It is further alleged that, when Complainant's wife namely Yogita

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came to rescue Complainant, at that time, the accused nos. 1 and 2 and third unknown person squeezed her throat and took the gold ring from her finger. There were two unknown people standing outside the house of Complainant. Those shouted from outside and told the other co-accused " Sanjayla khallas kara, tyala jeevant sodu naka, aamhi konhala yeu det nahi." Afterwards, the co-accused again started beating the Complainant with iron bar on his legs and stomach and tried to kill the Complainant. After listening the Complainant and his wife, the family members of Complainant shouted. The people gathered. Then accused removed the pistol and put it on the head and threatened Complainant. Later on, all the five accused boarded in a white colour four wheeler and ran away. The informant approached to police station Bhigvan and lodged his FIR against five persons.

4] During the course of investigation, the accused arrested. The provisions of MCOCA was applied by obtaining approval u/s. 23 (1) of the said Act, which was granted. The sections 3 (1) (ii), 3 (4) of MCOC Act added.

ARGUMENTS

5] The learned counsel for the applicant has urged that, there is no material to rope the applicant for the alleged offences punishable under the Penal Code much less for the offences punishable under MCOC Act. On the aspect of invocation of provisions contained in MCOC Act, Mr. P. N. Dombale urged with a degree

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vehemence that there is not a shred of material to show that the applicant is involved in any unlawful activities. There is no any material to establish the nexus of the applicant with the alleged continuing unlawful activities. In these circumstances, the invocation of provisions contained in MCOC Act is wholly unsustainable and suffers from the vice of complete non-application of mind. The applicant cannot be deprived of his personal liberty on the basis of such bald and unsubstantiated allegations.

6] Mr. P. N. Dombale pointed out that, the applicant has no motive to commit present crime. No specific role is attributed to the present applicant in the alleged crime. The false case has been fastened against the applicant and it is submitted that the prosecution has come out with concocted story, which full of all events and eventualities. The applicant is having deep roots in the society. As per the allegations in the FIR, the applicant has not snatched any of the ornaments either from the Complainant or his wife. The investigation is over and charge-sheet is filed. The crime chart as against the applicant do not show that the offences committed on behalf of the organized crimes syndicate or as its members individually and / or collectively. The co-accused Shubham Kharade has been released on bail. The role of the present applicant is on the same footing to that of co-accused Shubham Kharade, who is released on bail. The applicant is ready to abide all the terms and conditions,

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which will be imposed by the Court. On these grounds, he prayed to enlarge the applicant on bail on the ground of parity.

7] The learned Spl.PP. has vehemently opposed the application. He submits that there is prima facie evidence showing that the applicant is a member of Organized Crimes Syndicate, that the applicant had by his conduct has shown that he is prone to commit offences for pecuniary gains and that in the present crime the applicant had taken active part in committing dacoity and attempt to murder upon the Complainant, thereby showing his prima-facie culpability in the offences so registered against him.

8] It is further submitted that, the muddemal viz. one iron bar is recovered at the instance of applicant. According to him, as per the judgment of **Govind Ubhe Vs. State of Maharashtra**, there is no need that accused is having criminal antecedents. The only requirement is that accused is a member of organized crime syndicate is sufficient. Therefore, he submit that the prohibition prescribed under section 21 (4) of MCOG Act would come into play which would disentitles the applicant from seeking his release on bail. On these grounds, he prayed for rejection of the bail application.

9] I have considered these submissions. I had gone through the entire charge-sheet. After perusal of

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material on record, it reveals that, the name of the applicant is specifically mentioned in the FIR. The allegations made against the present applicant is that, he, Bala Darade and three other accused-persons, being a member of organized crime syndicate committed dacoity on the point of weapon and attempted to commit murder of Complainant on 30/11/2020. Later on, as the investigation progressed, the investigating officer also found that this applicant and 4 other persons formed an organized crime syndicate which indulge in various activities prohibited under the law.

10] Perusal of the allegations in the subject crime pointed out this crime committed by the applicant in capacity as members of organized crimes syndicate or on behalf of such crime syndicate.

11] Upon perusal of the police papers, it transpired that, applicant is habitual offender and there are in totality 8 offences pending against him in different police stations of Pune District. In the present crime, name of the applicant is mentioned in the FIR. The applicant alleged to have assaulted the informant. Thus, prima facie involvement of the applicant can be seen from the bare perusal of the FIR. The antecedent of the applicant lends credence to the submissions of the Ld. APP. Therefore, in my view, the applicant does not deserve any leniency at the hands of this court. With this, following order is passed.

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ORDER

Application (Exh.32) is rejected.

Pune
Date : 03/06/2022

Sd/-
(G.P. Agrawal)
Addl. Special Judge,
Under MCOC Act,Pune.

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CERTIFICATE

I affirm that the contents of this P.D.F file Order is same word for word as per original Order.

Name of Steno : Smt. S. S. Gadkari,
(Stenographer Grade-I)

Court Name : G. P. Agrawal
Addl. Special Judge, Under
MCOC Act,Pune.

Date of Order : 03/06/2022

Order signed by the
Presiding Officer : 03/06/2022

Order Uploaded on : 03/06/2022