

Special Case No. 825/2021

(CNR No.MHPU01-016174-2021)

State of Maharashtra
(Through Yerwada Police Station, Pune) ... Complainant

Vs.

Shivraj Manoj Mirgal ... Accused

ORDER BELOW EXH. 12

1) Applicant has filed second application for grant of bail under Section 439 of the Code of Criminal Procedure, in connection with C.R. No.332/2021 registered with Yerwada Police Station, under Section 307, 395, 452, 504, 506, 427, 201, 188 of the Indian Penal Code, u/s. 4(25) of Arms Act, u/s. 37(1), 135 of Maharashtra Police Act and u/s. 3, 7 of Criminal Law Amendment Act and u/s. 3 of Epidemic Act, u/s. 51(b) of Disaster Management Act, 2005, Sec. 11 of Covid Act and under Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short "MCOC Act"). The applicant had filed Cri. Bail Appln. No.6960/2021 which has been not pressed on 26/10/2021, which amounts to rejection of bail.

Brief facts :-

2) This case is an example of continuing unlawful activity of an organized crime syndicate headed by accused Praful @ Gudya Ganesh Kasbe. Accused Praful Kasbe has formed an organized

crime syndicate in Yerwada area of Pune. The applicant and co-accused are the members said crime syndicate. The commit crimes in the area, singly or jointly, for unlawful gain and to establish supremacy of their gang, by promoting insurgency.

3) Deceased Nitin Shivaji Kasbe was a member of the gang of accused. He was murdered by the members of rival gang i.e. organized crime syndicate headed by Akash Kanchile. Some of the members of Kanchile gang are in judicial custody. Informant Vanraj Mahendra Jadhav was a child in conflict with law, involved in the said murder case. He is on bail. Needless to say that both the gangs are at inimical terms.

4) Out of the rivalry and to establish supremacy in the area the accused persons hatched conspiracy to commit murder of informant Vanraj Jadhav.

5) On 01/07/2021 during 21.30 hrs. to 22.15 hrs. the informant – Vanraj Jadhav was chatting with his friends at Ganpati Temple. At that time, the accused persons including the applicant made an attack on the informant by means of deadly weapons viz. Swords, sickles, palghan etc. They followed the informant, who was running to save his life. Gang leader, accused Praful attempted a blow of sword on his head from backside. However, the informant got luckily escaped.

6) The applicant and accused went to the house of informant, damaged the closed door by means of weapons and also assaulted witnesses Amir Shaikh and Juned Shaikh. They also went to the house of witness Babu Khandare, damaged his TV set and

took away mobile phone of witness Juned. They also caused damage to the door of house of witness Robert Sasane.

Investigation :-

7) After the incident F.I.R. came to be registered at the instance of informant Vanraj. During investigation, accused were arrested, statements of witnesses were recorded, under sanction provisions of MCOC Act came to be added to the offence, charge-sheet is filed.

Arguments :-

8) Ld. counsel for applicant Mr. Pramod Dhule has argued that, the applicant is falsely implicated in the present crime. The applicant has no concern with the alleged crime. He is aged about 21 years old. The injuries sustained to the informant were simple in nature and those did not come within the purview of sec. 307 of I.P.C. The investigation is completed. Charge-sheet is filed. The further detention of applicant is un-warranted. He is permanent resident of Pune. He is ready to abide each and every condition, he is not a member of any organized crime syndicate, there are no criminal antecedents, there is no recovery from him, he was holding no weapon at the time of incident and therefore he be released on bail.

9) Ld. Spl. P.P. Mr. Fargade has argued that the offence is serious one, involvement of the applicant is clear from the F.I.R., statements of witnesses and the CCTV footage. The provisions of MCOC Act are duly applied in the case and therefore the applicant is

not entitled to be released on bail as per Section 21(4) of the MCOCA Act.

Considerations :-

10) I have carefully gone through the charge-sheet. In statements of eye-witnesses, it is specifically mentioned that at the time of incident the applicant and other accused committed an attack initially on the informant and they continued to the riot in the area by damaging different house properties and also assaulted some of the witnesses for no reasons. Witness Juned Shaikh has stated that when he saw the gang of applicant and co-accused passing from the lane, he wait aside. However, accused Ajay Kasbe pelted a cement block which hit him on his left leg. Accused Ajay Kasbe also snatched his mobile phone. The applicant and co-accused also attempted an assault on witness Sagar Khandare and his family members, however, they got rescued by closing the door from inside. The applicant and co-accused created terror in the vicinity and were beating residents for absolutely no reason. This is an act on their part which was aimed to establish supremacy of the gang in the area.

11) The incident has been captured by a CCTV camera and the footage has been procured and produced with the charge-sheet. When it was argued that the applicant was not a part of the gang and he did not accompany other accused, the CCTV footage has been displayed in the open Court. A copy of CCTV footage has also been given to the learned advocate of the applicant. What has been transpired from the CCTV footage is that the applicant was

associated with the other gang members and they all were proceeding together holding different weapons. The CCTV footage thus confirmed the statements given by different witnesses of the locality.

12) The incident in question was a serious attempt of committing murder of the informant. The applicant and the gang members caused injuries to many innocent persons and also damaged doors and household properties of the witnesses. Certainly this is an instance of the continuing unlawful activity of the organized crime syndicate. In short, there is sufficient material to show that the applicant/accused was involved in commission of offence which was certainly an offence punishable under Section 307 of I.P.C. with the other penal provisions as mentioned in the charge-sheet.

Application of provisions of MCOG Act :-

13) Learned advocate for the accused has argued that there are no criminal antecedents of the applicant/accused and therefore provisions of MCOG Act cannot be invoked against him. At the very outset, it is necessary to mention that application of provisions of MCOG Act is *qua* offence and not *qua* accused. It has been so clarified by Hon'ble Apex Court in the case of **Kavitha Lankesh Vs. State of Karnataka & ors, S.L.P. (Criminal) 5387/2021**. The relevant part of the judgment is quoted hereinafter :

“Be it noted that requirement of more than two chargesheets is in reference to the continuing unlawful activities of the organized crime syndicate and not qua individual member thereof.”

14) The Hon'ble Bombay High Court has also made similar observations in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 ALL MR (Cri.) 1903**. Relevant observations of the Hon'ble Bench from para No.37 of the judgment are quoted hereinafter :

*".....Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organised crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organised crime committed by him will be a part of the continuing unlawful activity of the organised crime syndicate. What is important is the nexus or the link of the person with organised crime syndicate. **The link with the 'organised crime syndicate' is the crux of the term 'continuing unlawful activity'**. If this link is not established, that person cannot be roped in."*

15) The prosecution has filed crime chart of the co-accused in the case. Four charge-sheets for the offence punishable under Section 307, 324, 269, 278, 143, 144, 148, 149 of I.P.C. alongwith the provisions of Arms Act and Bombay Police Act are pending against gang leader, accused Praful Kasbe. Similar are charge-sheets filed against co-accused Karan Sonavane, Ajay Kasbe, Vivek Singh, Aniket Kasbe, Mahesh Kamble and others. In the charge-sheets, some accused are common. They have been prosecuted either singly or jointly. The members are changed but the common thread is that the offences appears to have been committed either for unlawful gain or to establish supremacy of the gang in the area. There are offences against property also in the charge-sheet filed

against the co-accused. From the nature of crimes alleged in the pending charge-sheets it can easily be gathered that the organized crime syndicate headed by accused Praful Kasbe is continuously involved in commission of crimes which can be said to continuing unlawful activities of the organized crime syndicate. I have gone through the proposal for sanction and the sanction order passed under Section 22(3) of the MCOC Act. There appears no infirmity.

16) When involvement of the applicant in commission of principal offence is clear and when it is found that the provisions of MCOC Act have been duly applied with proper sanction, the applicant cannot be released on bail, having regard to the specific bar provided under Section 21(4) of the MCOC Act. If the applicant is released on bail, there is every possibility that he will get indulged in the similar criminal activity. Hence, no bail can be granted to him. In the result, I pass following order.

ORDER

Application (Exh.12) is hereby rejected.

Pune.
Date : 02/02/2022

Sd/-
(Satyanarayan R. Navander)
Special Judge,
Under MCOC Act, Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	Rajesh A. Shimpi Stenographer Grade I
Name of Court	Shri. S.R. Navandar, Addl. Sessions Judge, Pune.
Date of Order	02.02.2022
Order signed by PO on	02.02.2022
Order uploaded on	03.02.2022