

ORDER BELOW EXH.-63 IN SPECIAL CASE NO.825/2021

MHPU010161742021

***State of Maharashtra Through Yerwada Pol. Stn.******Vs.******Mahesh Balbhim Sarode******(CNR No.MHPU01-016174-2021)***

- 1) Read application.
- 2) The Spl.PP appeared and resisted the application by filing say of IO Exh.76 on the ground that the offence is serious in nature. The accused / applicant is member of crime syndicate. The eye witnesses are disclosed the name of accused / applicant and his overt act. The six crimes are registered against the accused / applicant which are of serious in nature. The CCTV footage is collected by the IO. The panchanama is drawn about the CCTV footage. The witnesses are identified the accused / applicant as one of the assailant. The accused / applicant and co-accused are having terror in the vicinity. There is possibility of tampering witnesses and evidence and prayed to reject the application.
- 3) Following points arise for determination. My findings thereon is as under:

POINTS**FINDINGS**

- | | | |
|---|-----|-----|
| 1. Whether accused / applicant made out case to allow the application ? | --- | No. |
|---|-----|-----|

2. What order? -- Application is rejected.

REASONS

POINTS NO. 1 & 2 :-

4) Heard advocate for accused / applicant and Spl.PP for State.

5) The advocate for the accused / applicant argued that the FIR is lodged on 02/07/2021 in respect of incident dated 01/07/2021. There is delay to lodge the FIR. The accused / applicant is arrested on 08/04/2022 and since then in custody. In the FIR the name of accused / applicant and specific role is not mentioned. The accused / applicant was not present on the spot along with co-accused. He has not taken part in the crime. The accused / applicant is seen in the CCTV footage but there is no overt act of the accused / applicant. The six crimes are registered against the accused / applicant. Out of those in three crimes he is acquitted. This is first offence along with co-accused. The provisions of MCOG Act are not attracted. The co-accused Shivraj Manoj Nirgad is released on bail by the Hon'ble Bombay High Court as per the order dated 17/03/2023 in bail application no. 835/2022. The role of the said accused is same and one of the present accused / applicant. On the ground parity accused / applicant is entitled for bail. The accused / applicant is ready to obey terms and conditions imposed by the court. He relied on AIR 2015 SC 2947 State of Maharashtra Vs. Shiva @ Shivaji Damji Sonawane and others and prayed to allow the application.

6) The Spl. P.P. argued that the offence is serious in nature. The accused / applicant and co-accused have chased to the complainant, visited complainant's house and tried to assault to the complainant. They have also assaulted to the injured witness Amir Shaikh due to which he sustained injuries to the thumb. The eye witnesses are disclosed the name of accused / applicant as one of the assailant. The CCTV footage panchanama discloses that the eye witnesses are identified accused / applicant as one of the assailant. He was along with co-accused. The six crimes are registered at different police stations against the accused / applicant which are of serious in nature. The sanction under section 23 (1) (2) of MCOG Act is accorded. The accused / applicant is having terror in the vicinity. He was expelled for two years. The accused / applicant is not entitled for bail on the ground of parity as role of present accused is different than the released accused. There is possibility of tampering witnesses and evidence and prayed to reject the application.

7) I have gone through the chargesheet and documents filed along with it. The FIR is lodged by Wanraj Mahendra Jadhav alleging that on 01/07/2021 at about 9.30 p.m. after dinner he was at Durgamata Temple, Laxminagar, Yerwada along with friends Meghraj Bist, Vaibhav Kamble. At that time suddenly from the back side lane of police chowky, 10 to 12 persons came who were having sword, sickles in their hands. Out of them are co-accused and other two-three persons. They chased him due to previous enmity. The co-accused Gudya uttered the words they will commit murder. He run away from the spot, escaping the blows of sword and hidden

himself. Subsequently, he visited the house and came to know that his friend Nikhil Kamble visited his house. The accused visited his house to assault him but his mother has locked the iron door. Due to it, they have given blows on the door by sickle and sword and abused. They waving sword, sickle proceeded due to which there was terror. They saw Amir Shaikh proceeding towards his house. The co-accused Shubham Singh has assaulted him by sword which was hit on the left hand thumb and sustained injuries. Then they visited his maternal uncle Babu Khandare's house. They have entered in the house of maternal uncle, damaged T.V. and household articles by sickle. They suspect that the Nikhil Kamble is inside the house and started abusing and asking to send him out giving threat to kill. At the house of maternal uncle, the Ajay Kasbe has assaulted on the hand by stone to the Junaid Shaikh and taken away the mobile costs of Rs.16,000/-. He managed to escape and run away. They have damaged the rickshaw and other vehicles parked nearby and made terror in the vicinity. Hence, the complaint.

8) The FIR was registered vide CR no.332/2021 for the offence punishable under section 307, 395, 452, 504, 506, 427 of the IPC, under section 25 r/w.4 of the Arms Act, under section 135 r/w. 37 (1) of the Maharashtra Police Act and under section 3, 7 of the Criminal Law Amendment Act. The proposal was sent for sanction to prosecute under the provisions of MCOCA Act. It was accorded. Accordingly, the provisions of MCOCA Act was invoked. Then sanction was accorded to file chargesheet under section 23 (2) of the MCOCA Act.

9) The accused / applicant's application for bail Exh.40 is rejected by this court by passing detailed order. The grounds raised and advanced by the advocate for the accused / applicant in the said application for bail are same and one of present application except ground of parity. I come to conclusion that as other grounds are taken into consideration at the time of rejecting the bail application Exh.40 there is no need to again discuss those grounds.

10) The co-accused Shivraj Manoj Nirgad is released on bail by the Hon'ble Bombay High Court as per the order dated 17/03/2023 in bail application no.835/2022. I have gone through the order of Hon'ble High Court in para no. 5 it is observed that "no overt act is attributed to the present applicant in the alleged crime. There are no other criminal antecedents. According to the prosecution, the present applicant is member of the organized crime syndicate formed by co-accused Prafulla Kasbe however prima facie there appears to be no material to that effect. The applicant is in jail for more than 1 ½ year."

11) I have gone through the statement of eye witness Junaid Shaikh whose mobile is taken away by the co-accused by assaulting him. He has mentioned the name of accused / applicant as present along with co-accused and who is one of the assailant. I have gone through the statement of Amir Shaikh who is injured witness. He has given name of the accused / applicant as accompanying with the assailants and taken active part in commission of the offence. The CCTV footage panchanama discloses that the witnesses are identified accused / applicant as along with the co-accused and

taken part in commission of the offence. It is admitted that the six crimes are registered against the accused / applicant for the serious offences which are punishable more than three years. It is submitted that out of it, in three cases the accused / applicant is acquitted but it is pertinent to note that the criteria to invoke the MCOG Act is whether one or more crimes are registered against the accused. Whether he is acquitted or convicted does not make difference. The one crime is registered against him along with the co-accused. It is also pertinent to note that he was expelled for two years. The sanction under section 23 (1), 23 (2) of the MCOG Act is accorded by the authority. I am not agree with the arguments of advocate for the accused / applicant.

12) The role of the present accused / applicant is different than the released accused. I come to conclusion that on the ground of parity the applicant is not entitled for the bail.

13) I have gone through the ruling relied by the advocate for the accused / applicant **AIR 2015 SC 2947 State of Maharashtra Vs. Shiva @ Shivaji Damji Sonawane and others** wherein it is observed that commission of offence prior to enactment of MCOG Act does not by itself constitute an offence under MCOG Act. MCOG Act can be invoked only if accused continues with unlawful activities after its promulgation. The say of IO discloses that six crimes are registered against the accused / applicant for the offences punishable more than three years and court has taken cognizance, out of them one crime is committed along with co-accused. I come to the conclusion that the above observations

are not applicable to the present facts and circumstances.

14) Taking into consideration the facts and circumstances, evidence on record and above discussions, I come to the conclusion that there is prima facie evidence against the accused / applicant. The accused / applicant has failed to made out case to allow the application. Thus, points under consideration answered accordingly and I pass following order.

ORDER

Application is rejected.

Pune
Date : 10/08/2023

(S. B. Salunkhe)
Addl. Sessions Judge and
Spl. Judge, under MCOC Act,
Pune.

CERTIFICATE

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

Name of Steno : S. Y. Shaikh,
(Steno Grade I)

Court name : Shri. Shrikant B. Salunkhe,
Addl. Sessions Judge,
Spl. Judge, under MCOC Act,
Pune.

Date : 10/08/2023

Order signed by presiding
officer on : 10/08/2023

Order uploaded on : 11/08/2023