

**ORDER BELOW EXH.-74 IN SPECIAL CASE NO.825/2021**

MHPU010161742021

*State of Maharashtra Through Yerwada Pol. Stn.**Vs.**Ashitosh Subhash Adagale**(CNR No.MHPU01-016174-2021)*

- 1) Read application.
- 2) The Spl.PP appeared and resisted the application by filing say of IO Exh.77 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 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 commit such type of offence after released on bail. 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 ? | --- | Yes. |
|---|-----|------|

2. What order? -- Application is allowed.

### 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 03/07/2021 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. This is first offence. The provisions of MCOA 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. On the ground parity accused / applicant is entitled for bail. The accused / applicant is ready to obey terms and conditions imposed by the court and prayed to allow the application.

6) The Spl. PP argued that 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. 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 MCOC Act. It was accorded. Accordingly, the provisions of MCOC Act was invoked. Then sanction was accorded to file chargesheet under section 23 (2) of the MCOC Act.

9) In the FIR specific name of accused / applicant is not mentioned. The statement of eye witness Junaid Shaikh and Ajay Kasbe does not disclose the specific overt act of the accused / applicant. The CCTV footage panchanama disclose the name of the accused / applicant as present along with co-accused. His specific

role is not seen in the CCTV footage. As per the schedule of crimes of accused / applicant filed by the I.O. this is first offence of the accused / applicant. 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 organize 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." I come to conclusion that the role of the accused / applicant is same and one of the released accused. On the ground of parity the accused / applicant is entitled for bail.

10) Taking into consideration the facts and circumstances, evidence on record and above discussions, I come to the conclusion that the accused / applicant has made out case to allow the application. The apprehension in the mind of prosecution may be eliminated by putting stringent conditions. Thus, points under consideration answered accordingly and I pass following order.

### **ORDER**

- 1] Application is allowed.
- 2] The accused Ashitosh Subhash Adagale is released on bail on executing PR bond of Rs.1,00,000/- and furnishing one or

two sureties of like amount in connection of CR no.332/2021 registered at Yerwada police station, on following conditions :-

- i) He should not tamper the prosecution witnesses and evidence.
- ii) He should attend the Yerwada Police Station on every 10<sup>th</sup> day of the month till disposal of the case.
- iii) He should file his and two nearest relatives permanent address and mobile numbers.
- iv) He should attend each and every date of the proceeding.
- v) He should not indulge in such type of activities in future.

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