

ORDER BELOW EXH.-76 IN SPECIAL CASE NO.921/2021

MHPU010179612021



The State of Maharashtra Through Baramati Taluka Police Station

Vs.

Ajinkya @ Pappu Suresh Bhosale

- 1) Read application.
- 2) The Spl.PP. appeared and resisted the application by filing say at Exh.90 on the basis of say of IO at Exh.78 on the ground that the offence is serious in nature. The crime was registered vide CR no.350/2021 at Baramati Taluka Police Station against the applicant and co-accused for the offence punishable under section 307, 120-B, 504, 506 of the IPC, under section 3 (25) (27), 4 (25) of the Arms Act. The proposal was sent to level offences punishable under MCOC Act. The proposal was accepted and permission was granted as per section 23 (1) of the MCOC Act to level additional charge under MCOC Act. The FIR and statement of the injured discloses that the juvenile conflict with law Akash who is son of co-accused Prashant More has fired on the injured by pistol to commit murder and then fled away. The incident in question arose due to political rivalry and financial disputes between the injured and co-accused. The wife of injured i.e. complainant is member of Zilha Parishad, Baramati. The injured used to get the government contract in Baramati area. The

co-accused are also getting contract of work, due to which there was dispute in between them. In the investigation, it is revealed that the applicant is member of organized crime syndicate and involved in continuing unlawful activities singly or jointly as a member of organized crime syndicate or on behalf of such syndicate by use of violence or threats of violence or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person promoting insurgency. The applicant and co-accused have hatched the conspiracy to commit murder. The criminal cases are registered and pending in which cognizance is taken by the court against the applicant. The applicant has provided pistol to the co-accused to commit murder. The statements of witnesses confirmed that he has provided the pistol. The applicant has given threat to the complainant to kill. The applicant is involved in the crime. The applicant is not entitled for the bail and prayed to reject the application.

3) Following points arise for determination. My findings thereon is as under:

<u>POINT</u>	<u>FINDING</u>
1. Whether applicant made out case to allow the application?	-- No.
2. What order?	... Application is rejected.

REASONS

POINT NO.1 and 2:-

4) Heard advocate for applicant and Spl. P.P.

5) The advocate for the applicant argued that the offence is registered vide CR no.350/2021 for the offence punishable under section 307, 120-B, 504, 506 of the IPC and under section 25 r/w. S.3 and 27 of the Arms Act at Baramati Taluka Police Station. The FIR is lodged by the wife of injured who is member of the Zilha Parishad. It is alleged that there is motive to commit an offence due to political rivalry but substantial the same there is no evidence on record. The applicant is no way concern with the said act of Akash and co-accused. The applicant was not present along with co-accused on the spot. There is no recovery from the applicant. The muddemal is recovered from the co-accused. In the statement of injured, name of applicant is not mentioned. In the supplementary statement the injured has mentioned the name of applicant. There is delay to record the said statement which suspect about the alleged commission of offence. The statements of witness Avinash Taware, Nitin Taware does not disclose the name of applicant and in supplementary statement they have mentioned name of the applicant which creates doubt. The co-accused Ribel Yadav has given confessional statement under section 18 of the MCOC Act. It does not disclose that the applicant has sold the pistol. There is no prima facie evidence against the applicant. The applicant has not committed the offence along with the co-accused. He is not member of the crime syndicate. There is no recovery / discovery from the applicant. He relied on rulings of **2021 ALL MR (Cri) 1409 Shri Girish Kumaran Nayar Vs. The State of Maharashtra and 2022 ALL MR (Cri) 2754 Devram Gulab Ghogare Vs. State of Maharashtra.** The rulings on which prosecution has relied are not applicable to the present facts and circumstances and prayed to

allow the application.

6) The Spl. PP argued that the offence is serious in nature. The MCOG Act is attracted. The applicant's case is squarely fall under section 21 (1) (d) (e) of the MCOG Act. At the time of deciding bail application there is no need to evaluate the evidence in deep, the prima facie case need to be taken into consideration. As per observations in 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra, the MCOG Act is attracted. The FIR is lodged by the wife of injured. She has specifically mentioned about illegal acts of the applicant and co-accused. The statement of injured clearly discloses that previously there was quarrel in between him and co-accused on account of government contract. So many times the co-accused has given threats to him not to obtain contract. The confessional statement of the co-accused Rahul Yadav be taken into consideration which is recorded under section 18 of the MCOG Act. The weapon is attached from co-accused under memorandum under section 27 of the Indian Evidence Act. The said weapon is sold by the applicant to the co-accused. The witness statement is supported to the said allegations. The statements of witnesses disclose that the applicant has given threat to the injured showing pistol. The crimes are committed by the applicant along with co-accused. The crime chart is filed on record. The status photo of the applicant is filed on record in which applicant is seen along with pistol mentioning "यम है हम". This fact shows that the applicant and co-accused are having terror in the society. The applicant and co-accused have hatched the conspiracy to commit murder of the injured. The witness Nitin Taware stated

that he has seen while handing over pistol to the co-accused Prashant More by the applicant. The CDR are collected by the IO which discloses that the co-accused and applicant were in contact. The permission is accorded under section 23 (1) of the MCOG Act to level offence under MCOG Act. There is prima facie evidence against the applicant. She relied on AIRONLINE 2022 SC 1325 Zakir Abdul Mirajkar, 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra and prayed to reject the application.

7) I have gone through the charge-sheet and documents filed along with it. The FIR is lodged by wife of injured Sou. Rohini Raviraj Taware alleging that she is member of Zilha Parishad, Pune. Her husband is helping her to do social work. Her husband is doing construction business. The construction work of the Grampanchayat and other government offices was allotted to her husband. She and her husband are doing development work at the village. The co-accused Prashant More's wife Rekha More is elected member of Grampanchayat, Malegaon Budruk from ward no.4. As they have started the development work at ward no.4, the co-accused Prashant More and his wife were resisting and opposing the same. Time to time her husband have tried to convince to the co-accused and his brother Vinod More, however, they have not paid any heed to it. They used to pick up quarrel, assault to their followers. Prior to three months the quarrel took place on account of damage of pipe line by the follower Rahul Gavhane while transporting dung in between the co-accused and others and Rahul Gavhane. They have taken side of Rahul Gavhane due to which the co-accused and his brother and others were grudge against them. The crime was

registered against them.

ii) On 31/05/2021 at about 6.45 they visited the house of Saad Shaikh to brought vada-pav. She and husband proceeded towards the house of Saad Shaikh by car. The husband left to brought vada-pav. She was in the car. One white colour bullet on which two persons were riding, out of them pillion rider was son of co-accused named as Akash More stopped. They alighted from the bullet motorcycle. She saw that the husband is returning from the house of Saad Shaikh. The Akash More has pointed gun and fired. The husband tried to run towards opposite side. Meantime Akash More has fired second time but it was not fired. At that time he shouted, "चिकू पाटील तुला सोडणार नाही, तुला कायमचा संपविणार आहे. तु माझे व माझ्या कुटुंबाचे नुकसान केले आहेस". Then they sat on the bullet and proceeded towards Malegaon factory. The persons gathered, at that time they shown the gun to them due to which those persons afraid and started running. The husband was injured and admitted at Baramati hospital and then for further treatment shifted at Giriyan Hospital, Baramati. Hence, the complaint.

8) The crime was registered at Baramati Police Station vide CR no.350/2021 for the offence punishable under section 307, 120-B, 504, 506 r/w.34 of the IPC and under section 25 r/w.4 of the Arms Act. The IO sent proposal to level offences punishable under section 3 (1)(ii), 3(4) of the MCOC Act and said proposal was sanctioned and accordingly offence punishable under MCOC Act are leveled.

9) I have gone through the statement of injured Raviraj

Taware. He has given details of the incidence dated 30/07/2019, 13/07/2020, November 2020, December 2020, January 2021, February 2021, 16/02/2021, 30/04/2021, 25/05/2021, 24/05/2021 about dispute, assault and quarrel with him by co-accused with their followers due to contract of construction and its monetary benefits etc. He further stated that on 31/05/2021 he visited the house of Saad Shaikh to brought vada-pav along with wife and given details of the crime. He has given supplementary statement on 09/11/2021 disclosing the incident took place in the month of May 2021 that the applicant was proceeding by Yamaha two-wheeler. He has took up the shirt and shown the pistol, shown the fingers as a pistol, pointed on head and fired, giving threat he will not forgive him as he is falsely implicated to the Akash More in a crime. He used to give threat to lodge the FIR under Atrocities Act if made complaint against him. It is submitted by the advocate for the applicant that in previous statement he has not disclosed the name of the applicant and subsequently his name is mentioned which creates doubt. From the record, it is clear that the applicant was absconded and arrested after eight months. At this stage, it cannot be said that the supplementary statement of the injured is doubtful.

10) I have gone through the statement of witness Nitin Taware dated 15/10/2021 wherein he has specifically stated that the applicant always seen in company of the co-accused Prashant More. When he was proceeding towards Malegaon factory, he saw applicant and Prashant More discussing and the applicant has handed over pistol to the co-accused Prashant More which he has

kept in a bag which was hanged on the bullet.

11) The statement of witness Nitin Taware dated 08/06/2021 discloses details about the hatched the conspiracy by the co-accused and the co-accused Prashant More told that he has brought the pistol to commit the murder of the injured.

12) The co-accused Ribel Yadav has given memorandum under section 27 of the Indian Evidence Act and produced the pistol used at the time of commission of the offence. As per the allegations of the prosecution, the said pistol was provided by the applicant. The status photo of the applicant is filed on record in which applicant is seen along with pistol mentioning "यम है हम". This fact shows that the applicant and co-accused are having terror in the society. The applicant was having pistol with him.

13) It is submitted that the applicant has not committed the offence along with the co-accused hence the MCOC provisions are not attracted. I have gone through the schedule of the crimes filed on record by the IO. Including present crime, 16 crimes of serious in nature are registered against the applicant within 10 years from the commission of present crime in which cognizance is taken by the court and punishment is provided more than three years. The crime CR no.421/2020 is registered at Baramati Taluka Police Station for the offence punishable under section 394, 341, 504 r/w.34 of IPC against the applicant and co-accused Ribel Yadav in the present crime. I am not agree with the arguments advanced by the advocate for the applicant that MCOC provisions are not attracted.

14) The prosecution has filed CDR of the applicant which discloses that there is conversation in between the applicant and co-accused 40 times within the proximity of time of commission of offence which prima facie discloses that the applicant was in contact with the co-accused at the time of commission of offence.

15) I have gone through the rulings 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra and AIRONLINE 2022 SC 1325 Zakir Abdul Mirajkar Vs. State of Maharashtra, relied by the Spl.PP. wherein it is observed that, requirement to come the offence under section 2 (1) (d) of Maharashtra Control of Organised Crimes Act (1999),

- a) the activity must be prohibited by law;
- b) it must be a cognizable offence punishable with imprisonment of three years or more;
- c) it must be undertaken singly or jointly;
- d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate;
- e) in respect of which more than one charge-sheet have been filed before a competent court.

The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'. What is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is not established, that person cannot be roped in. What is contemplated

under section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. I come to the conclusion that the requirement to level the offence under MCOC Act are prima facie fulfilled.

16) I have gone through the rulings of 2021 ALL MR (Cri) 1409 Shri Girish Kumaran Nayar Vs. The State of Maharashtra and 2022 ALL MR (Cri) 2754 Devram Gulab Ghogare Vs. State of Maharashtra, relied by the advocate for applicant, wherein on the facts and circumstances it is observed that, the MCOC Act is not operated against the applicant and applicant is entitled for bail. In foregoing discussions I come to the conclusion that the MCOC Act is attracted against the applicant. I come to the conclusion that said observations are not helpful to the applicant.

17) Taking into consideration the facts and circumstances and above discussions, I come to the conclusion that the applicant has failed to made out the case to allow the application. Thus, points under consideration answered accordingly and I pass following order.

ORDER

Application is rejected.

Pune
Date : 12/04/2023

(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	: 12/04/2023
Order signed by presiding officer on	: 12/04/2023
Order uploaded on	: 15/04/2023