

**Order passed below Exh.18 in MCOCA (bail) No.28/2020****(CNR Number:MHSN040005782020)**

( State vs. Anmol Madne &amp; others )

By these application present applicant/accused Gurusidh Laxman Jadhav praying for granting regular bail under Section 439 of Cr.P.C., and Section 21 of the Maharashtra Control of Organized Crime Act, 1999 ( for short, MCOC Act) in crime no.13/2019 registered with police station, Islampur, Taluka Walva, District Sangli, for offence under Sections 394 read with section 34 of the Indian Penal Code (IPC), and Sections 3(1)(ii), 3(2), 3(4), 3(5) of the MCOC Act. Now the charge-sheet is filed before this Court.

2. It is the case of prosecution that on 06.01.2019 at about 5.30 pm the complainant left his house along with amount of Rs.42,000/- for giving to the employees of his hotel, thereafter he stopped at Aman Mobile Shoppe in Momin Moholla for recharging the mobile at that time present applicant along with three unknown persons came near the said shop and the present applicant came on his person and assaulted from the back side of the skyth, therefore the complainant got frightened and started running, at that time the applicant demanded Rs.2,00,000/-, when he was fleeing at that time the all the accused chased him on motorcycle and forcibly taken the amount of Rs.42,000/- from his pocket, thereafter he went to the Mosque.

3. On the same day he lodge report in police station Islampur

about the said incident and on the basis of the said report the PSO, Police Station, Islampur has registered offence vide crime No. 13 of 2019 for the offence punishable under section 394 read with section 34 of the Indian Penal Code.

4. During initial investigation of the matter the accused were arrested and some of the stolen property along with other articles used in the commission of the offence were seized. Initially present applicant was arrested and released on bail by the learned Judicial Magistrate First Class, Islampur.

5. During investigation it revealed to the investigating officer that accused Amol Madane is a gang leader and he is running a gang for illegal financial gain and they were demanding extortion from various persons, so also they are having previous criminal antecedents at their credit and therefore proposal was sent for invoking the provisions of MCOC Act on 21-01-2019. Accordingly the Special DIG, Kolhapur range had accorded sanction for invoking provisions of the MCOC Act in the present crime and thereafter said crime was transferred to SDPO, Islampur and after due investigation it revealed to the investigating officer that accused Anmol Madne had formed a gang and he is a gang leader and he along with other accused have created terror in the vicinity of Islampur and are demanding extortion and committing offences. After due investigation he sent charge-sheet for sanction and accordingly sanction was accorded and thereafter charge-sheet was filed before the Special Judge under MCOC Act, Pune and thereafter said charge-sheet was transferred to this Court for disposal according to law.

3. It is the case of applicant/accused that he has not committed any offence punishable with death or life imprisonment. Nothing incriminating has been recovered from the present applicant/accused. The allegations levelled against applicant/accused are fallacious and baseless. He is falsely involved in the present crime without any material evidence whatsoever against applicant/accused and he denied that he has ever committed any offence as alleged by complainant. Other co-accused have been released on bail by this Court and the role attributed to the present applicant/accused is on the same footing and therefore, he claimed bail on the ground of parity. The prosecution of applicant/accused under the provisions of MCOC Act, 1999 does not fall under the four corners of the definition of MCOC Act, 1999. Prosecution has failed to establish link of the offences committed by the applicant/accused and other co-accused to be undertaken severally and/or jointly committed as a member of organized crime syndicate or on behalf of such syndicate. Further he has contended that he is permanent resident of Islampur and there is no possibility of his absconding from process of justice or its likelihood is negligible. There is no need of his custodial interrogation as investigation is over and charge-sheet is filed in this Court. He undertakes that he will not tamper with the evidence of prosecution and shown his ready and willingness to abide by the terms and conditions to be imposed on him while granting bail.

4. Learned counsel for applicant/accused in support of his submissions has relied on the following case law:

(i) Dinesh Bhondulal Baisware Vs. The State of

Maharashtra, 2016 ALL MR (Cri) 3517 (Nagpur Bench.)

(ii) Bhupendra @ Golu s/o.Suryakant Borkar Vs. The State of Maharashtra, 2017 ALL MR (Cri) 1561 (Nagpur Bench).

(iii) Sunil Raosaheb Pawar & another Vs. State of Maharashtra, in Anticipatory Bail application No.1163 of 2013 decided by the Hon'ble High Court, Bombay, on 28th October, 2013.

(iv) Isaac Isanga Musumba and others Vs. The State of Maharashtra and others, (2014) 15 Supreme Court Cases 357.

(v) Sanjay Pandey Vs. Chhaganlal J.Jain & Others, 2001 ALL MR (Cri) 425, (High Court, Bombay).

5. Prosecution has filed reply at Exhs. 21 inter alia contending that crime is serious in nature. There are previous criminal antecedents at their credit. After investigation in detail offences under the provisions of MCOC Act are levied against applicants/accused and also sanction has been accorded by the competent authority, there are witnesses on three incidents and prima facie from the statements of witnesses, it can be gathered that applicant/accused and other co-accused have threatened and demanded extortion from complainant and assaulted the complainant and robbed the complainant. Anmol Madne is gang leader and all other accused are active members of the said gang. Considering all these acts and circumstances, they prayed to reject the application for bail.

6. Considering the statements on record and after perusal of

the charge-sheet it appears that as per the statement of the informant the present applicant have assaulted him by Scythe and when he started fleeing the applicant along with 3 unknown persons have followed him by motorcycle taken Rs. 42,000/- and thereafter he went to mosque. The other eye witness Naim has stated that the informant came to his shop for recharge and thereafter went to the pan shop at that time present accused along with other accused tried to assault the informant, therefore the informant ran to the mosque. Further another eye witness Sahrif has stated that in front of his shop accused were following the informant and therefore he went to the Mosque. Considering the statement of these witness there is variance about taking the amount the amount.

7. So far as the statement of Umesh Kachare is concern they are not eye witness to the present incident. There is recovery of amount of Rs.4,000/- for the present applicant.

8. So far as the provisions of the MCOC Act are concerned, the counsel for the accused is relying on the decisions cited supra in the matter of “*Dinesh and Bhupendra*” I have gone through the guidelines of the said decisions, for considering the aspect of MCOC Act following decisions will be guided:

1. **Govind Vs. State of Maharashtra, 2009 (9) LJSOFT 47**, wherein in para 37 it has been held that-

*“ But even otherwise, if all provisions are read together we reach the same conclusion, Section 2(1)(d) which defines ' continuing unlawful activity sets down a period of 10 years within which more than one chargesheet have to be filed. The members*

*of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or a behalf of such syndicate undertake an organized crime. In both the situations, the MCOAC can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOAC. This is evident from Section 3(4) of the MCOAC which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs. 5 lakhs.*

*The charge under the MCOCA ropes in a person who as a member of the or organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one chargesheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said chargesheet 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 the case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus of 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'.*

9. After going through crime chart filed by the investigating officer along with charge-sheet, it appears against the gang leader Anmol Madne 9 criminal cases are shown but they are in individual

capacity and in two remaining cases all the accused in the present matter is seen, but both the offences are on police investigation and further against the present applicant 4 offences are shown but out of that 3 cases are on police investigation. Considering the crime chart against the gang leader Anmol Madane, it no where reflects that while committing crime he was accompanied by any other persons and has formed a gang and on behalf of that gang he has committed the crime in the vicinity of Islampur. This is the first offence against the present applicant and the other accused about robbery, prior to the incident of 06.01.2019 the present applicant along with gang leader Amol Madne has not committed any offence. Considering the above findings it is crystal clear that against the Gang Leader more than one charge-sheet is filed and are pending for trial and in my considered view the said offences are committed in individual capacity and not committed as a crime syndicate, it cannot be said that the gang leader prior to this incident was running a crime syndicate and was changing the persons for commission of crime.

10. In view of the above findings, it cannot be concluded that the accused Anmol Madne was running a crime syndicate and the present accused was a member of the said crime syndicate. Considering above findings, after going through the order of my learned predecessor of granting bail to the other co-accused, I am of the considered view that the role of accused is same and rule of parity is also applicable to the present applicant, after going through the above discussion I am inclined to grant bail to the present applicant. In the result, application of applicant/accused deserve to

be allowed. Hence, I pass the following order:

**ORDER**

1. The application is allowed.
2. Applicant/accused Gurusidh Laxman Jadhav be released on bail on his executing PB of Rs.1,00,000/- (Rs. One lac only) with one or two sureties of like amount, in crime No.13/2019 registered with Police Station, Islampur for the offences punishable under Sections 394 r/w 34 of the Indian Penal Code and Sections 3(1)(ii), 3(4), 3(5) of the MCOC Act, on following conditions:
  - (i) After release on bail, the applicant/accused shall keep himself quarantined for 14 days in his house after releasing from jail.
  - (ii) On his release on bail and after the quarantined period of 14 days, applicant/accused is directed not to enter in Sangli district except the dates of this proceeding till final decision of this case.
  - (iii) The applicant/accused shall not tamper the prosecution witnesses and pressurize the prosecution witnesses in any manner.
  - (iv) The applicant/accused shall not commit breach of the terms and conditions issued by the competent authority during lock down period and shall follow the guidelines issued by the Public Health Officer.
  - (v) The applicant/accused shall not indulge in such type of offence or any other offence.
  - (vi) The applicant/accused shall furnish his new address proof and mobile numbers and addresses of his two nearest relatives to the Investigating Officer.
  - (vii) If there is infringement of any condition at the hands of the applicant/accused, the I.O. is at liberty to file

application for cancellation of bail before this Court.

3. Inform the police station, Islampur accordingly.

Islampur

15-12-2020

(Shekhar C. Munghate)

Special Judge under the MCOC Act/  
DJ-1/Additional Sessions Judge,  
Islampur.

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I affirm that the contents of this PDF file are same, word to word, as per the original order.

Name of Stenographer	:	K.S.Shinde, Steno(Grade I)
CourtName	:	District Judge-1/Addl.Sessions Judge.
Date	:	15-12-2020
Signed by Presiding officer on	:	16-12-2020
Uploaded on	:	16-12-2020