

ORDER BELOW EXH. 25 IN SPECIAL (MCOC) CASE NO. 64 OF
2023

(CNR No.MHST-01-000980-2023)

The State of Maharashtra
Vs.
Aditya Sudhir Jadhav.

1] This is second bail application U/s. 439 of Cr.P.C. by accused **Aditya Sudhir Jadhav** in connection with Crime Register No. 371/2022 registered with Shahupuri Police Station, Satara for the offence punishable U/s. 307, 326, 143, 147, 148, 149, 387, 341 of Indian Penal Code (IPC), Section 4/25 of the Arms Act, Section 142 of Maharashtra Police Act and Sec.3 (1)(ii), 3(2) & 3(4) of The Maharashtra Control of Organized Crimes Act, 1999 (for short "MCOC Act") and Section 142, 37(1)(3)/135 of the Bombay Police Act, 1951.

2] Heard Ld. Advocate Mr. G. Y. Sarda for the applicant/accused and Ld.A.P.P. Shri.Muke for the State.

3] Brief facts of the prosecution case are that, Informant Shahid Yusuf Inamdar, injured Aryan Vishal Kadale and Uday Nilesh Awale are the students of Arts & Commerce College, Satara. Accused Yash Jambhale, Anna Mane and Dhanraj Bodke were also the students of this college. They are indulged in criminal activities. Accused Yash Jambhale is the leader of the gang. Accused persons posed themselves as a member of 'Bakasur Gang'. They create a terror in the College and used to extort money from the students.

4] On 16/11/2022, after the recess of the College about 2.30 p.m., when injured Aryan Vishal Kadale was proceeding to his home on the Bullet of his friend Uday Awale near Shriram temple at Pratapganj Peth, Satara, 15 to 20 youth including the present applicant and the gang leader Yash Jambhale came there on 7 to 8 Motorcycles. They were racing and were riding the motorcycles in a high speed and in a rash manner. They were armed with deadly weapons like knife and Koyata. They were shouting and moving the weapons in the air to create terror in the society. When they saw the injured and Uday Awale on Bullet, accused Jelya @ Jalindar and Tetya @ Gourav Bhise gave cross dash of motorcycle to the Bullet of Uday Nilesh Awale. When he stopped his Bullet, all the accused surrounded them. The gang leader Yash Jambhale threatened to kill injured Aryan Vishal Kadale and uttered the words, "तु बकासुर गँगशी पंगा घेतला आहे. तुला जिवंत सोडणार नाही. बकासुर गँगने हप्ता मागूनही न देता आमचेविरुद्ध दरोड्याची तक्रार करतो काय, तुला काय वाटले आम्ही तुला सोडू काय, तुझ्यामुळे मला जामीनसाठी लय पैसे खर्च करावे लागले, तुला बकासुर गँगचे विरुद्ध तक्रार दिल्याबद्दल डबल हप्ता देण्याबाबत मेसेज देवूनही तुझी मस्ती सुरूच आहे. तु हप्ता दिला नाहीस. तुझ्या अंगात लय मस्ती आहे. आज तुला तुझ्या गल्लीत भरदिवसा सर्वासमोर आम्ही मारणार. कोण तुला वाचवायला येतो ते बघतो. ". He then pierced the cookery in the stomach of Aryan Kadale. Other accused also assaulted him by means of koyata and the piece of tile. The other accused were shouting that 'hurry up, today we will finish his subject'. The residents of the locality were frightened and due to fear they closed the doors, windows and shutters of shops. The incident took place on the open road. The people due to fear moved their vehicles and started running away. Before leaving the spot, Yash

Jambhale and his associates were shouting, 'now you will realize what is meaning by Bakasur Gang' and they ran away on the motorcycle while moving the weapons in the air. The injured was assaulted since one month before the incident, he had lodged report against this gang for offence of dacoity and ransom (Hafta).

5] Coincidentally, the Informant Shahid Yusuf Inamdar the students of the College were proceeding from the spot of incident. He witnessed the incident and lodged the report.

6] In the assault, Aryan Kadale sustained grievous injury. He was moved to the Hospital and later on shifted to Ruby Hospital, Pune for further medical treatment.

7] Learned Advocate for the applicant submitted that applicant is not named in FIR. He is not having criminal antecedent. He is inhabitant of Satara having roots in the society. The charge-sheet has been filed after due investigation. He is not involved in the offence and he has been arrested on the suspicion. It is contended that, accused is not a member of organized crime syndicate. Therefore, the provisions of MCOC Act are not attracted to the present accused.

8] Ld.Advocate for the accused further submit that there is no likelihood of committing any offence by him in future and prima facie evidence shows that no offence is committed by him, therefore he is entitled for bail.

9] Ld. A.P.P for State vehemently submitted that there is abundant evidence against the accused indicating his involvement in the commission of crime. My attention is invited to the Test Identification Parade panchanama of the present accused wherein he has been identified by four witnesses. In addition to this, the Call Details Report shows that the accused was in contact with the Gang-leader Yash Jambhale and there were more than 7 calls between them at the relevant time. The motorcycle bearing registration No. MH-11/DC-8145 used by the accused in the commission of offence has been produced by his father during the course of investigation. Moreover, witness Ganesh Bhosale has attributed specific role against the said accused. It is further submitted that the injured was badly assaulted and it is mentioned in the spot panchanama that the blood stains are seen on the spot. Even presence of accused on motorcycle is seen in CCTV footage.

10] Ld.APP further submitted that accused is involved in serious offence like creating terror in the society. If he is released on bail, he may flee away from the justice and there is every possibility that being the member of 'Bakasur Gang' he may pressurize the witnesses.

The term “**continuing unlawful activity**” has been defined U/s. 2(d) of MCOC Act, which reads as under : -

“continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which

more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

As per S.2(e), organized crime syndicate means :

“Organised crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.”

S.2(f) provides that, *“Organized crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime.”*

11] Ld. Advocate for the applicant submit that to attract the provisions of MCOC Act, the previous offences registered against the accused should be committed by him singly or jointly as a **member of crime syndicate** or on behalf of crime syndicate and there must be some nexus between the past crime at his discredit and present crime. The reliance is placed on the case of *Mohamad Ilias Mohamad Bilal Kapadiya versus The State of Gujarat, 2022 LiveLaw (SC) 538*, wherein it has been laid down that to invoke the provision of MCOC Act, two requirements have to be satisfied. The first one is that, an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. The second one is that, in respect of such an activity more

than one charge-sheet must have been filed before a competent Court in the preceding 10 years. In the present case, there is no common charge-sheet, wherein the present accused is involved with the other accused persons. However, this is not sufficient for the accused to seek the bail. In view of Sec. 21(4)(b) of the Act, he must satisfy the Court to additional requirements

(1) he is not guilty of offence and

(2) he is not likely to commit any offence while on bail.

12] The reliance is also placed on the case of ***State of Maharashtra Vs. Bharat Baburao Gavhane and 13 other, 2007 Cri. L. J. 552*** and ***Boini Mahipal & Another Vs. State of Teleangana*** reported in ***2023 LiveLaw (SC) 546***.

13] Ld. APP submits that the accused is member of such organized crime syndicate which indulged in trying to gain control and trying to demonstrate supremacy in society. My attention is invited towards the panchanama with regard to the video reels made viral by the gang on Instagram. It appears from the panchanama and pendrive that the gang has created file in the name of 'King maker' 'Mr. Bebo', 'abhi o0', 'Bakasur tolli satara' etc. In the various videos, the member of gang are being seen while making the following dialogues,

[1] “आपुनका धंदा डरपे चलता है।

[2] आम्ही हवा करत नाही, आमच्या नावातच हवा आहे.

[3] ये मामा बोल दे अपने लडको से इधर आने के लिये गांड मे दम लगता है

[4] तु फक्त राईटच्या हिशोबात आहेत आणि मी तुला घालवण्याच्या

- [5] हिम्मत की बात कैसे करोगे घुस के वार करते है इतना दम रखते है
- [6] दहशत चेहरेकी नाही नाम की होनी चाहीये
- [7] चेहरे की नाही नाम की होनी चाहीये तु क्या मारेगा क्या है तेरी औकात
तुझा सारखी शंभर कुत्री मारल्यात चौका चौकात
- [8] हवा करायला तबीयत नाही गांडीत दम लागतो
- [9] जो कोणी कंपनीच्या विरोधात जाईल त्याला संपवण्याची जबाबदारी
कंपनीचीच आहे, मी ना तोडतो

14] Ld. APP vehemently submitted that, the reels viral on Instagram account are sufficient to gather how the member of the Bakasur gang are trying to create terror and supremacy in society. It is submitted that the presence of the accused is established on the spot by prima facie evidence on record.

15] I find that the material available on record, prima facie shows the complicity of the accused in the commission of offence. The special provisions under MCOC Act have been made for prevention and control of the criminal activities by organized crime syndicate or gang, and for matters connected therewith or incidental thereto.

16] In the present case, even if it is accepted that no previous offence is registered against the present applicant, but prima facie there is abundant evidence on record to show his involvement in the offence with other members of gang. After the rejection of previous application dated 17.03.2023, there is no material change in the circumstances in favour of accused which leads him to move the present bail application.

17] Considering the gravity, nature and amplitude of the offence and the abundant evidence on record, there may be every possibility of pressurizing the witnesses if the accused is released on bail. In such circumstances, in my considered opinion, it would not be in the interest of justice to release the accused on bail. Hence, following order.

ORDER

Application stands rejected.

Place : Satara
Date : 21/08/2023

(A. S. Jadhav)
Special Judge (under MCOCA),
Satara.