
(2021) 11 BOM CK 0126
In the Bombay High Court
Case No : Bail Application No.2389 Of 2021

Aditya Ashok Marne

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 143, 147, 148, 149, 307, 326, 323, 504, 506
Arms Act, 1959 — Section 4(27)
Maharashtra Police Act, 1951 — Section 37(1), 135
Maharashtra Control Of Organised Crime Act, 1999 — Section 3(1)(ii), 3(4), 21(4), 21(4)(b)

Citation : (2021) 11 BOM CK 0126

Hon'ble Judges : V.G.Bisht, J

Bench : Single Bench

Advocate : Shailesh Kharat, A.A.Palkar

Final Decision : Allowed

Judgement

V. G. Bisht, J

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.381 of 2017 registered with Police Station Warje Malwadi, for offences punishable under Section 307, 326, 323, 504, 506, 34, 143, 144, 147, 148, 149 of the Indian Penal Code (IPC) read with Section 4(27) of Arms Act read with Section 37(1) and 135 of Maharashtra Police Act read with Section 3(1) (ii), 3(4) of Maharashtra Control of Organised Crime Act (MCOC Act).

2 It is the case of prosecution that on 12th October 2017 while the informant and his friend namely Raju Anpur were proceeding on their way to Ramnagar, Warje, all of a sudden accused Vikcy Karjale, Akshay Tingre and their 3 to 4 friends came running on their person. Vicky Karjale gave a blow on the head of Raju Anpur by means of a sharp weapon. Similarly, accused Akshay Tingre and his

companion also gave a blow of sharp weapon on his head and he and Raju Anpur were further beating by fist and kick blows. The informant, accordingly, lodged the report.

3 Mr. Shailesh Kharat, learned counsel for the applicant, submits that the informant knows the applicant by name, despite that, his name is not given in the First Information Report (FIR). According to the learned counsel, there is confession of A-4 which exculpatory in nature, and therefore, cannot be termed as confession. Even otherwise, the statement of injured witness would go to show that the applicant had not hit any weapon and the role of assault by weapon is attributed to other accused. In such circumstances, it cannot be said that the applicant had taken part in assaulting by using a weapon. Similarly, the charge-sheet does not fulfill the requirement of provisions of MCOC Act qua the applicant and therefore, for all these reasons, the applicant deserves to be released on bail.

4 Mr. Palkar, learned APP, on the other hand, submits that though no specific role is attributed in the FIR, but the statement of the injured recorded subsequently would show that the applicant had taken part in the commission of the offence. The learned APP also invited my attention to Medical Certificate at page no.83 pertaining to Raju Anpur and as also that of the informant. Besides, there are antecedents and in such circumstances, the applicant does not deserve to be enlarged on bail.

5 Perused the investigation papers as also reply filed by the Investigating Officer. From the plain reading of the FIR it would be seen that first of all the contention of the learned counsel that the applicant is known to informant is not disputed by way of counter reply. This being so, a plain reading of the FIR would show that the name of present applicant is nowhere revealed. However, the statement of Raju Anpur recorded during the course of investigation would show that accused Vikcy Karjale and his companion had assaulted him and the informant by means of weapon like stick. As far as the present applicant is concerned, his statement shows that accused Shubham and the applicant had beaten them by means of fist and kick blows. Thus, all that attributed is that the applicant had used fist and kick blows and nothing else.

6 Coming to the Medical Certificates, the first certificate pertains to Raju Anpur. Most of the injuries are contused lacerated wounds except bilateral anterior wall frontal sinus fracture, right facial nerve anal fracture in vertical segment extending up to right temporal bone, right shoulder acromion fracture and lateral end of clavicle fracture. Similarly, the Medico Legal Certificate of the informant shows contused lacerated wound. It is apparent from the FIR and the statement of Raju Anpur that the weapons were allegedly used by Vicky Karjale and Akshay Tingre. I have also pointed out from the statement of injured Raju Anpur that the applicant had indulged into fist and kick blows.

7 I have also gone through the antecedents of the applicant given at page no.13

of the affidavit. Since the role of applicant is very limited, that too, to the extent of use of fist and kick blows, in my considered opinion, that will not affect his right of bail.

8 Similarly, I am also mindful of Section 21(4)(b) of MCOC Act which states that Court shall satisfy itself regarding two conditions while granting bail. The first condition is that the Court has to satisfy that there are reasonable grounds that the person has not committed a particular offence for which the crime is registered. The second condition is that he is not likely to commit offence while on bail. At the cost of repetition, I may reiterate, this Section also, in no uncertain terms, contemplates that there should be commission of an offence and the material placed and allegations made against the accused in that offence, has to be taken into account by the Court first, and thereafter, the Court has to consider second circumstance that he is not likely to commit any other offence while on bail.

9 I have already made it clear that the prosecution has not been able to establish the involvement of the applicant in the alleged offence, prima facie, and this being so, it would be far-fetched to anticipate or visualize that in future the applicant, without there being any material on record, in all probability would commit cognizable offence.

10 In the light of above analysis, considering the fact that the role of the applicant is not satisfactorily established by the prosecution, the restrictions under Section 21(4) of the MCOC Act would not preclude the Court from granting bail to the applicant.

11 Needless to say, a case for bail is made out. Hence, I pass the following order :

ORDER

(i) Applicant - Aditya Ashok Marne shall be released on bail in Crime No.381 of 2017 registered with Police Station Warje Malwadi, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the Court proceedings regularly.

(iv) Bail before the trial Court.

(v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.