

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.789 of 2015

Raja @ Rajendra s/o Balaji Pawar
And Another.

.. Applicants.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. S.S. Gangakhedkar, Advocate, for applicants.

Shri. N.B. Patil, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 11th MARCH 2015

ORDER:

1) The application is filed for bail. Both the sides are heard. This Court has perused the papers of investigation. This Court has also perused the record produced by the applicants to support their case.

2) This Court had an occasion to consider the material collected by the investigating agency when this Court decided Criminal Application Nos.6541 of 2014 and

6887 of 2014. This Court rejected the applications filed by other accused like Tanaji Narayan Sathe and others. The other Hon'ble Judge of this Court has rejected the bail application of one of the accused from this crime. It was submitted that this is the first application of the present applicants before this Court.

3) The incident in question took place on the night between 30-4-2014 and 1-5-2014. When the complainant, truck driver, was taking bags of sago in his truck towards Rajasthan, his truck was intercepted by one four wheeler in which there were dacoits. These dacoits entered the truck and gave severe beating to the complainant and the second driver. Both these drivers were confined in the cabin of the truck on the back side after tying their limbs and then the truck was taken to lonely place. The complainant was thrown in a ditch and they took the truck to other place. Both the drivers were robbed of their belongings which were on their person. The truck containing the bags was taken away and the offence of dacoity was committed of the article worth more than Rs.15 lakh.

4) During investigation, it transpired that the second driver was murdered and his dead body was thrown at other place. In view of these circumstances, crime was registered for offences punishable under sections 395, 396, 397, 364, 201 etc of Indian Penal Code and section 3(1)(ii), 3(2), (4), (5) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act for short). Submission was made by the learned counsel for the applicants that before registering the crime under MCOC Act, bail was granted by the Additional Sessions Court. It can be said that proposal was made for invoking the MCOC Act and the authority considered the antecedents and the record of the previous crimes committed by the applicants so provisions of MCOC Act were invoked. The proposal and the sanction order show that as against applicant Raja as many as 10 crimes of theft, dacoity, robbery of the property were registered from the years 2011 to 2014. Only one offence was registered for an offence under section 326 IPC. It can be said that this is the first case in which murder was also committed. As against applicant No.2 Kaka three crimes were registered which were also in respect of theft, dacoity and robbery

between the period 2011 and 2014. Kaka is the real brother of applicant Raja and as per the case of the State Raja is the leader of the gang.

5) Some dacoits who are involved in the aforesaid offences were identified by the witnesses during test identification parade. There is also material like statements of employees of the hotel where some dacoits had gone with the aforesaid truck. Record is collected of CDR in respect of mobile phone of applicant Raja. In addition to that there is confessional statement recorded under section 18 of the MCOC Act in which Tanaji admitted his guilt and also described the role of other members of the gang. As against Kaka there is more material like recovery of 138 bags of Sago worth more than Rs.4.22 lakh, the stolen property from the present case. Similarly 71 bags were recovered from applicant Raja under section 27 of the Evidence Act. In view of these circumstances even if Raja was not present on the spot, the aforesaid material can connect him with the present offence and this material can be considered to show that he was working as the gang leader.

6) The material collected against applicants and others show that they had formed a syndicate and they were committing offences at different places by forming groups and they remained always in touch with their leader Raja and he is the main offender. Kaka is real brother of gang leader and there is material of the aforesaid nature. There is bar to grant bail under the provision of MCOC Act to the accused. There is material to make out a prima facie case. It is not a fit case to grant the relief of bail.

7) The application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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