IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1653 OF 2014

Dattatray Yashwant Bhakare … Applicant
Vs.
The State of Maharashtra … Respondent

Mr. H. H. Ponda i/b. Mr. Sandip Karnik for Applicant.
Ms Aruna S. Pai, APP for Respondent-State.

CORAM : R. G. KETKAR, J.
Reserved on: 23RD NOVEMBER, 2015
Pronounced on: 9TH DECEMBER, 2015

ORDER :

Heard Mr. Ponda, learned Counsel for the applicant and Ms Pai, learned APP for the State at length.

2. By this Application under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the applicant - accused No.7 prays for enlarging him on bail in M.C.O.C. Special Case No.10 of 2010 arising from D.C.B. C.I.D. C.R. No.60/2010 registered at Tilak Nagar Police Station, transferred C.R. No.122/2010. The said C.R. was registered for the offences punishable under Sections 452, 302 and 34 Indian Penal Code, 1860 (for short 'I.P.C.') read with Sections 3, 7, 25 and 27 of the Arms Act, 1959 read with Sections 3(1)(i), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (for short M.C.O.C. Act). The facts and circumstances giving rise to the filing of the present application, briefly stated, are as under:

3. Criminal Bail Applications No.586 of 2014, 1653 of 2014 and 713 of 2014 were listed before Hon'ble Mr. Justice Abhay M. Thipsay on 28.04.2015. In paragraph 5 of order dated 28.04.2015 , it was observed that "since these applications have been clubbed together and since the

previous application filed by one of the applicants – Dattatray Bhakare (applicant herein) was dealt with by Shri Justice R. G. Ketkar, Registry to examine whether all these applications have been properly listed before me. If any orders for placing the matters before one and the same Judge are necessary, the Registry may do the needful."

4. In pursuance of that order, Registrar (Judicial-I) placed submissions before the Hon'ble the Chief Justice. By administrative order dated 05.05.2015, the Hon'ble the Chief Justice directed the Registry to list all these applications before this Court. Accordingly, I have heard the learned Counsel appearing for the parties at length.

5. It is the case of the prosecution that one person, by name, Farid Ahmed Tayab Tanasha was murdered pursuant to a pre-planned conspiracy hatched among the persons including (a) accused No.1-Jaffer Razialam Khan, (b) accused No.2 – Mohammed Sakib Shanawaz Alam Khan, (c) accused No.4 – Pankaj Nanku Singh, (e) accused No.5 – Randhir Ashok Singh, (f) accused No.6 – Mohammed Rafiq Abdul Samad Shaikh, (g) accused No.7-applicant herein, (h) accused No.9 – Vishwanath Marana Shetty.

6. It is the further case of the prosecution that on 03.06.2010, two unknown persons were involved in the murder of Farid Tanasha and a report to that effect was made by the wife of Farid Tanasha with the Tilaknagar Police Station pursuant to which C.R.No.122 of 2010 for the offences punishable under Sections 452, 302, 34 of the I.P.C. and Sections 3, 7, 25 and 27 of Indian Arms Act was registered on 03.06.2010.

7. The applicant is a builder by profession and carries on business in the name and style of "M/s. Prathmesh Developers" situate at Shop No.1, Dharod Apartments, Edulji Road, Charai, Thane (W). The

applicant was arrested in connection with the said C.R. on 02.07.2010. On 14.07.2010, the Joint Commissioner of Police (Crime) granted prior approval under Section 23(1)(a) of the M.C.O.C. Act permitting further investigation of the offence under that Act. After the investigation was completed, the Commissioner of Police granted sanction under Section 23(2) of the M.C.O.C. Act on 25.09.2010 to file charge-sheet so as to enable the Special Court to take cognizance of the offences under the M.C.O.C. Act. The applicant is arraigned as accused No.7 in the said case.

8. The applicant filed application for bail before the learned Sessions Judge for MCOC Cases. By judgment and order dated 03.05.2011, the learned Special Judge rejected the application. The applicant filed Criminal Bail Application No.1502 of 2011 in this Court. By a detailed order dated 14.03.2012, the bail application was rejected. The applicant has filed the present second bail application in this Court.

9. In support of this Application, Mr. Ponda strenuously contended that it is a case of the prosecution that Hamlog Co-operative Housing Society (for short 'Society') consists of 29 members. Out of these 29 members, 4 members have dispute with the present applicant. They did not enter into agreement with the applicant. He submitted that earlier bail application preferred by the applicant was rejected by this Court mainly on the ground that statements made by these 4 members prima facie indicated that they got in touch with Farid Tanasha some time in December 2009. Said Tanasha assured them that he will personally look into the dispute and will protect the rights of the said members. This Court also considered the statement of one of the relatives of deceased Farid Tanasha, who stated that 4 members of the Society met the deceased in December, 2009 and there was some dispute between the applicant and those members. Said Tanasha assured to protect their

rights as also he will personally look into their grievances. Mr. Ponda submitted that the controversy between the 4 members of the Society and the applicant is resolved.

10. He submitted that the other ground for rejecting previous bail application by this Court was the purported telephonic conversations between the applicant and Vijay Shetty- wanted accused as also telephonic conversations between accused No.6 Mohammed Rafiq Abdul Samad Shaikh and accused No.2- Mohammed Sakib Shanawaz Alam Khan as also telephonic conversations between accused No.10- Rajendra Chavan and applicant. He submitted that perusal of these conversations do not remotely indicate involvement of the applicant. Mr. Ponda submitted that the applicant is a developer and the Society entered into first development agreement on 25.08.2005 and a supplementary agreement on 22.01.2007. As per these agreements, the applicant has constructed two Wings namely 'A' and 'B'. 22 members out of 29 members have been allotted flats. Remaining 7 members will be allotted flats in Wings 'C' and 'D' of the Society, which are yet to be constructed. Mr. Ponda has taken me through the statements of these 4 members. The alleged disputes between 4 members and the applicant were as under:

(i) Issue of payment of stamp duty and registration charges;
(ii) Issue regarding committee members being not made party in the allotment agreement;
(iii) Issue regarding benefit of additional F.S.I.;
(iv) Issue regarding revision of the building plans; and
(v) Issue regarding rights of the members over parking space and common area.

11. Mr. Ponda submitted that as far as issue of payment of stamp duty and registration charges is concerned, the same is to be paid by the

applicant and not by the individual members. He relied upon clause 36 of the development agreement dated 25.08.2005. He submitted that the applicant is to allot 323 sq.ft. carpet area free of costs. As per clause 36, the stamp duty and registration charges are payable by the members and not by the developer. However, in respect of the additional area, over and above 323 sq. ft. carpet area, the applicant developer is liable to pay stamp duty and registration charges. He submitted that all the members have executed affidavits in the year 2003 confirming that they are fully aware of the contents of the development agreements and will not subsequently raise issue about redevelopment. He has taken me through the affidavits of these members and in particular clause 3 thereof.

12. He submitted that notwithstanding clause 36, the applicant has already paid the stamp duty for 29 members, who were alloted flats in the redevelopment project. The four members, who raised purported dispute with the applicant, are also from these 29 members. In other words, he submitted that in respect of the 4 members also, the applicant has in fact paid the stamp duty. He has taken me through the bank details to substantiate that on 18.12.2009, the applicant has paid amount of Rs.75,281/- towards stamp duty.

13. As far as the issue regarding committee members not made party in the allotment agreement is concerned, he submitted that Society is a party to the development agreements dated 25.08.2005 and 22.01.2007. The said agreements are duly registered. The allotment agreement for the respective flats of the members will be registered with individual member and not with the Society. There is, therefore, no question of committee members being made party in the allotment agreement. He submitted that the four members who have alleged differences with the applicant were not the members of the managing committee.

14. As far as the issue regarding benefit of additional F.S.I. is concerned, Mr. Ponda has taken me through the relevant clauses of the registered development agreement dated 25.08.2005. In particular, the recitals of the said agreement reveal that the applicant is entitled to utilize the entire F.S.I. as may be available on the property in accordance with the plans that may be approved by the managing committee of the Society and sanctioned by the MHADA, Municipal Corporation and other Competent Authorities. Clause 2 thereof provides that the applicant as a developer, alone, has right, title and interest to utilize F.S.I. among other things. Clause 10 provides that if for any reason, the developer is entitled to avail more or additional benefit of T.D.R./ buildable area, the same shall belong to the Developer alone and the owner / society, its members shall not claim any extra or additional consideration from the developer. It was further clarified that after obtaining full completion certificate and conveyance and handing over possession of the flats, if any F.S.I. is accrued / becomes available on the plot then only the owner / society shall be entitled to it. In the present case, the said contingency is yet to take place. He further submitted that the minutes of the Special General Body Meeting of the Society convened on 11.10.2009 also shows that the applicant is entitled to utilize F.S.I.

15. As far as the issue regarding revision in the building plans is concerned, he submitted that the development agreements dated 25.08.2005 and 22.01.2007 provided that the applicant is entitled to revise the building plans with the approval of the Society and as per the Development Control Regulations.

16. As far as the issue regarding parking space and common area is concerned, he submitted that under the resolution passed in the Special

General Body Meeting convened on 11.10.2009, it was resolved that issue of parking and common areas will be discussed and it was specifically agreed that the said portions will be allotted by the applicant. Mr. Ponda submitted that in the first place, there was no dispute between the 4 members of the Society and the applicant. Secondly, as the dispute is covered either by the registered development agreement or resolution dated 11.10.2009, in any case, the alleged dispute between the four members of the Society and the applicant was resolved and now does not subsist.

17. Mr. Ponda submitted that as far as the telephonic conversations that allegedly took place between Vijay Shetty - wanted accused and the applicant are concerned, it is the case of the prosecution that the conversations have allegedly taken place from international numbers - 0061881215655 and 0061290372184. These numbers are displayed as 00698 and 00699 and they are alleged to be of Vijay Shetty. He submitted that the assumption of the prosecution in that regard is incorrect as no documents substantiate the case of the prosecution. He submitted that these international numbers according to the prosecution's own case stand in the name of one Santosh Shetty. The prosecution has failed to establish any link between Santosh Shetty and Vijay Shetty in the charge-sheet which contains voluminous documents.

18. He further submitted that it is the case of the prosecution that applicant was using mobile number 9594699924. The said number stands in the name of one Jamir Shaikh who is a member of a syndicate gang headed by the gangster by name Ravi Pujari. He relied upon the letter dated 09.06.2010 addressed by Police Inspector, Property Cell, D.C.B., C.I.D., Mumbai to the Additional Commissioner of Police (Crime), Crime Branch, C.I.D., Mumbai. He submitted that the said

document clearly falsifies the prosecution's case that the international calls on this number were made by Vijay Shetty to the applicant and vice versa. This also contradicts the case of the prosecution as to which syndicate is in fact involved in the entire crime.

19. He submitted that the prosecution has alleged that the applicant had talks with wanted accused Vijay Shetty @ Suresh Shetty from two numbers i.e. 9820279288, which is applicant's personal mobile number and 9594699924 allegedly given to the applicant by accused No.6. As far as the personal mobile number of the applicant is concerned, he has taken me through the Call Detail Record (for short 'CDR') in a tabulated form for the period from 01.01.2010 to 01.07.2010, which is at page 21 of the application. He submitted that the personal mobile number was not kept on interception. There is, therefore, no transcript for the calls referred in the table at page 21. As far as the first 6 entries between 26.03.2010 and 12.05.2010 are concerned, transcript is not available. Mobile No.9773461679 is in the name of one Rajesh Chavan. There is no material on record to indicate that the said number was used by accused No.6. Neither the Sim card of that mobile number nor the handset bearing international IEMI No.352366030461970 in which the said Sim card was used has been recovered from the accused No.6. Even in the confessional statement of accused No.6, there is no reference to the said mobile number. In other words, he submitted that there is no proof that the said mobile number was used by accused No.6.

20. He has invited my attention to - (i) the summons dated 18.08.2010 issued under Section 91 of Cr.P.C. by the Assistant Police Commissioner to Nodal Officer, Vodafone Essar Limited (page 401) seeking information about user of Vodafone Mumbai Network for the period from 01.03.2010 to 01.07.2010 by the international numbers -

0061881215655 and 0061290372184 and the response of Vodafone; (ii) statement of Vodafone officer recorded on 28.08.2010. He submitted that from this material, it is clear that both the international numbers - 0061881215655 and 0061290372184 have not used Vodafone Mumbai Network for the period from 01.03.2010 to 01.07.2010. CDR in tabular form at page 21 of the application becomes doubtful.

21. He further submitted that the Assistant Police Commissioner issued summons dated 18.08.2010 under Section 91 of Cr.P.C. for the CDR of international numbers - 0061881215655 and 0061290372184 to BSNL. He submitted that the BSNL responded on 04.09.2010 and furnished the information of relevant entries (pages 392 to 399 of the application). He submitted that there is no record of incoming / outgoing calls to / from personal mobile number of the applicant.

22. As far as the case of the prosecution that applicant used another mobile number 9594699924 is concerned, he submitted that it stands in the name of one Mr. Jamir Shaikh. This is evident from the confidential letter dated 09.06.2010. He has taken me through the incoming and outgoing call details from 25.05.2010 on the said mobile number which is at page No.405 of the application. He invited my attention to the statement recorded on 14.07.2010 at exhibit-AA (pages 428 to 432 of application). The concerned officer stated that he was appointed to keep watch on calls mentioned at page 429 of the application. He stated that he started observing the said international numbers from 04.06.2010. But calls from India, both incoming as well as outgoing, started from 13.06.2010. He submitted that calls from Sr. No.15 to 26 which includes call from 07.06.2010 to 12.06.2010 (including the calls of 10.06.2010, which are at Sr. No.16 to 22 and calls of 12.06.2010, which are at Sr.No.23 to 26 with transcript) are doubtful.

23. Mr. Ponda further submitted that deceased Farid Tanasha had a criminal record. He has invited my attention to the entire history of Farid Tanasha and submitted that he was connected with gangsters and the possibility of his having enmity with other gangsters and rival group cannot be ruled out. This contention is fortified by the confessional statement of the accused No.2 at page 311 of application and accused No.6 at page 333 of application. In other words, he submitted that the deceased Farid Tanasha was eliminated because of gang rivalry and not because of the alleged motive of the applicant or the dispute raised by 4 members of the Society with the applicant. He submitted that Farid Tanasha and the applicant never contacted each other. There is no material to establish that there was enmity between them.

24. Finally, he submitted that the applicant is in judicial custody for more than 4 years and denial of a speedy trial amounts to violation of fundamental right guaranteed under Article 21 of the Constitution of India. He submitted that though the first application of the applicant was rejected and this is his second bail application, the Court is not precluded from entertaining the second bail application, which is giving more details, further developments and different considerations. In support of this submission, he relied upon the decision of the Apex Court in the case of *Babu Singh Vs. State of Uttar Pradesh*, **(1978) 1 SCC 579**. The said decision considered decision of *G. Narasimhulu Vs. Public Prosecutor A.P.*, **AIR 1978 SC 429**. He also relied upon the decision of this Court in the case of *Dilip Shankar Vs. State of Maharashtra*, **1981 Cri.L.J. 500**.

25. Mr. Ponda relied upon the decision in the case of *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra*, **(2005) 5 SCC 294**, and in particular, paragraphs 38, 44 and 46 thereof. He submitted that

the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability, he may not be ultimately convicted, an order granting bail may be passed. In paragraph 44, the Apex Court observed that wording of Section 21(4) of M.C.O.C.Act does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the Court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4), therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. In paragraph 46, the Apex Court observed that the duty of the Court at this stage is not to weight the evidence meticulously but to arrive at a finding on the basis of broad probabilities. He also relied upon the decision of the Apex Court in the case of *Vasanthi Vs. State of Andhra Pradesh*, **(2005) 5 SCC 132**, and in particular paragraphs 5 to 7 thereof.

26. On the other hand, Ms Pai opposed the application. She strenuously contended that the applicant has not brought on record any change in circumstances, additional materials / further developments on record after passing of order on 14.03.2012 in Criminal Bail Application No.1502 of 2011. She invited my attention to the confessional statement of the accused No.2. Accused No.2 stated that the accused No.6 called him at Sahkar Plaza at 12 noon either on 2nd or 3rd April and handed over Sim card of IDEA company. Accused No.6 asked him to buy new handset and used Sim card of IDEA company. He thereafter purchased

China made double Sim card mobile from Bhendi Bazar and started using the said mobile. Accused No.6 was dealing in business of mobile phones and sale of Sim cards in a shop in Chembur. She invited my attention to the application purportedly made by Jamir Shaikh to IDEA Cellular for procuring a Sim card. Accused No.6 further stated that by using the documents of customer in his Vodafone shop, he filled that form by making forged signatures and obtained two Sim cards of IDEA Cellular. He retained the Sim card bearing No.9594776660 and handed over the Sim card bearing No.9594699924 to the accused No.6. On 25.05.2010, Vijay Shetty called him and gave him mobile number of the applicant. Vijay Shetty also asked accused No.6 to handover Sim card to the applicant. The Sim card bearing No. 9594699924 given by accused No.6 to the accused No.2 was handed over to the applicant. She submitted that even as of today, four members of the Society did not enter into agreement with the applicant. She submitted that the call details of mobile No.9594699924 shows that the accused No.6 used this Sim card in his handset bearing IMEI No.358673012790650 on 02.04.2010 and this is substantiated from details of the handsets used by the accused. In particular, accused No.6 used handset having IMEI No. 358673012790650 and mobile No.9494699924. On 2nd or 3rd April, 2010, accused No.6 handed over Sim Card bearing No.9594699924 to the accused No.2. Accused No.2 was using handset having IMEI No.358668010006240. On 25.05.2010, accused No.6 handed over Sim card No.9594699924 to the applicant. This fact is substantiated from the handset having IMEI No.359204004421080. The said fact is also substantiated from the handset and Sim cards recovered from applicant No.7.

27. Ms Pai invited my attention to the statement of Mr. Anil Dattatraya Satam recorded on 12.08.2010. He stated that he attempted

to serve summons on Mr. Jamir Shaikh at the address given in the application. Upon making enquiries, he came to know that the said gentleman is not residing in that locality and the address furnished in the application was also incorrect. She, therefore, submitted that from the material on record, it is evident that applicant was using Sim card No.9594699924 on and after 25.05.2010 till 12.06.2010. She has taken me through the transcription and submitted that perusal of transcription dated 12.06.2010 shows that on Sim card No.9220171966 belonging to the accused No.10 - Rajendra Chavan, applicant spoke to Vijay Shetty - wanted accused. The applicant stated that he had paid in all 90 (Rs.90 lacs). The fact that applicant spoke to Vijay Shetty on mobile of accused No.10 is substantiated from the statement of Shri Sanjay Vasudev Mistry, driver of the accused No.10, which was recorded on 05.07.2010. The conversation also names the four members of the Society, who are having dispute with the applicant. She has taken me through the-

(i) details of the handsets and mobile numbers used by the accused;

(ii) statement of Ishwar Sonu Khare recorded on 07.07.2010;

(iii) statement of Shobha Philips Jadhav, Secretary of the Society recorded on 22.09.2010;

(iv) statement of Juber Abdul Hamid Jamadar, distant relative of deceased Farid Tanasha recorded on 03.06.2010;

(v) statement of Rakesh Parasnath Tiwari recorded on 03.07.2010;

(vi) transcription of conversation dated 10.06.2010 between the applicant and Vijay Shetty and submitted that the conversations were cordial and at no point of time, any threat was given to the applicant asking him to part with substantial amount.

(vii) call details of mobile No.9594699924 and corresponding IMEI numbers.

28. Ms Pai submitted that the Investigating Officer collected voice samples of the applicant for examining whether questioned voice of speaker marked 'exhibit-1/4' is same as specimen voice of speaker marked 'exhibit-5'. The examination report shows that the auditory analysis of recorded questioned voice exhibit of speaker marked 'exhibit-1/4' and specimen voice exhibit of speaker marked 'exhibit-5' and subsequent acoustic analysis by using Computerized Speech Lab (CSL) reveal that the questioned voice exhibit of speaker marked 'exhibit-1/4' is similar to the specimen voice exhibit of speaker marked 'exhibit-5'. Hence, the voice of speaker marked 'exhibit-1/4' and 'exhibit-5' is the voice of the same person (namely applicant herein) with possible identification. She has invited my attention to confessional statement of accused No.6 - Mohd. Rafiq Abdul Samad Shaikh and international call records.

29. She submitted that accused No.6 – Mohd. Rafiq Abdul Samad Shaikh was constantly in touch with applicant - accused No.7 from 26.05.2010 to 30.05.2010. Accused No.6 was using mobile No.9773461679 and was contacting the applicant on his personal mobile No.9820279288. She has also taken me through the compilation of documents tendered by her, and in particular -

a. the handsets used by the accused giving details of mobile number and IMEI number;

b. statement of Ishwar Sonu Khare recorded on 07.07.2010;

c. statement of Ms Shobha Philips Jadhav recorded on 22.09.2010;

d. statement of Juber Abdul Hamid Jamadar claiming to be relative of deceased Farid Tanasha recorded on 03.06.2010;

e. statement of Rakesh Parasanath Tiwari working as Supervisor in Satyam Shivam CHS where applicant No.8 – Vishwanath Shetty is residing and was at the relevant time, Secretary of that Society, recorded on 03.07.2010;

f. conversation between applicant and Vijay Shetty that took place on 10.06.2010;

g. CDR of mobile No.9594699924;

h. call records between 26.05.2010 and 30.05.2010 of accused No.6 and applicant;

i. conversation between applicant and Vijay Shetty that took place on 10.06.2010;

j. conversation between applicant and Vijay Shetty that took place on 12.06.2010;

k. conversation between accused No.10 - Rajendra Chavan and Vijay Shetty that took place on 23.06.2010;

l. statement of Sanjay Vasudev Mistry working as driver with accused No.10- Rajendra Chavan recorded on 05.07.2010;

m. call details of 0061290372184 and 0061881215655 as also confessional statement of accused No.6 – Mohd. Rafiq Abdul Samad Shaikh.

30. In rejoinder, Mr. Ponda submitted that the prosecution has alleged that applicant had talks with Vijay Shetty – wanted accused from his personal mobile and other mobile No.9594699924 allegedly given to him by accused No.6. Personal mobile of the applicant was not kept on interception and hence there is no transcript for incoming and outgoing calls given in tabular form at page 21 of the application. Mobile No.9773461679 is in the name of accused No.10 – Rajendra Chavan. There is no material on record to indicate that the said number was used by accused No.6. Neither the Sim card of mobile nor handset bearing IMEI No.352566030461970 in which said mobile number was used has been recovered from accused No.6. From - (i) letter dated 18.08.2010 of Investigating Officer to Nodal Officer, Vodafone Essar Limited (page 401); (ii) reply of Vodafone (page 402); (iii) statement of Vodafone Officer recorded on 28.08.2010, it is clear that both the international numbers 0061881215655 and 0061290372184 have not used Vodafone

Mumbai Network for the period from 01.03.2010 to 01.07.2010. The chart at page 28 of the application showing incoming calls from 00698 on 12.05.2010 between 11:43:44 and 11:55:12 becomes doubtful. Even in CDR of both international numbers (pages 392 - 399 of bail application), there is no record of incoming / outgoing calls from personal mobile of the applicant.

31. As far as the mobile No.9594699924, Mr. Ponda submitted that it is in the name of Mr. Jameer Shaikh. Apart from that, in the statement dated 14.07.2010 of the concerned officer appointed for keeping watch on calls (page 428 to 432 of the bail application), he categorically stated that he started observing two international numbers from 04.06.2010 but calls from India both incoming and outgoing started from 13.06.2010. He, therefore, submitted that the calls from serial No.15 to 26 for the period from 07.06.2010 to 12.06.2010 (including the calls on 10.06.2010 at serial No.16 to 22 and calls on 12.06.2010 at serial No.22 to 26) of the transcript are prima facie doubtful. For all these reasons, he submitted that applicant deserves to be enlarged on bail.

32. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In the light of the submissions, basically two questions fall for consideration namely, (i) whether having regard to the material on record, prima facie, there are reasonable grounds for believing that the applicant is guilty of offences of which he is being tried and (ii) whether there are any change in circumstances after rejection of the first bail application of the applicant by this Court on 14.03.2012.

33. I have perused the statements of members of Society who did not enter into agreement with the applicant. Perusal of the statements prima

facie shows that these members got in touch with Farid Tanasha some time in December 2009 whereupon Farid Tanasha assured them that he will personally look into the dispute to protect the rights of the members. One of the relatives of Farid Tanasha namely Abdul Hamid Jamadar whose statement was recorded on 03.06.2010 stated that four members of Society met Farid Tanasha in December 2009 and there was some dispute between applicant and these members. Farid Tanasha assured these members that he will protect their rights and he will personally look into their grievances.

34. Mr. Ponda submitted that four members of the society had disputes with the applicant. The said disputes have been resolved long back. To a Court's query, he stated that till date, these four members have not entered into agreement with the applicant. Mr. Ponda also tried to submit that all the differences have been taken care of by the development agreement as also the General Body of the society and these issues have been resolved. It is not possible to accept this submission. The entire attempt of Mr. Ponda was to show that these four members could not have raised disputes in view of the development agreements dated 25.08.2015 and 22.01.2007 as also the Special General Body meeting convened on 11.10.2009 which dealt with issue of utilization of FSI among others. While considering the application for bail, it is not necessary to go into the question whether the disputes raised by these four members are genuine or not or whether they are justified in raising the disputes at all. The fact remains that the four members have raised the disputes and till date, they have not signed the agreement. This aspect was also considered earlier while rejecting the bail application on 14.03.2012. I, therefore, do not find any substance in the submission of Mr. Ponda that the disputes are amicably settled and now, do not subsist.

35. I have perused the confessional statement of accused No.2 and accused No.6. Perusal of statement of accused No.2 prima facie shows that accused No.2, on the basis of instructions given by the accused No.1, came to Mumbai. He was informed that wanted accused Vijay Shetty's associate, by name Shankar (accused No.6), will contact him as also show him residence of the person at Chembur, who has to be done away with. Accused No.6 gave him Sim card No.9594699924. Accused No.6 and accused No.2 were in constant touch with each other. The wanted accused Vijay Shetty through one of his associates handed over pistol and revolver as also bullets. Accused No.6 handed over Rs.1 lac to him (accused No.2). Accused No.6 thereafter gave him another Sim card. On 23.05.2010, accused No.6 informed accused No.2 that Farid Tanasha had gone out of Mumbai along with his wife. Thereafter on 01.06.2010, accused No.6 contacted accused No.2 and informed him that Farid Tanasha returned to Mumbai. On 03.06.2010 at 8.30 p.m., Accused No.2 along with the wanted accused Jishan, accused No.3 Twinkal and accused No.4 Pankaj came to Tilak Nagar. At 9.30 p.m., accused No.6 contacted accused No.2 on mobile. Thereafter accused No.2, accused No.3 Twinkal, accused No.4 Pankaj, accused No.5 Randhirsingh @ Nikhil proceeded towards residence of Farid Tanasha. Wanted accused Jishan came on bike. They forcibly entered house of Farid Tanasha. Accused No.2 went in search of Farid Tanasha and ultimately found him in bedroom. He fired seven bullets on Farid Tanasha and accused No. 5 Randhirsingh @ Nikhil fired two bullets and thereafter they escaped.

36. I have also perused the confessional statement of accused No.6. Perusal of confessional statement of accused No.6 shows that he has obtained shop No.3 in building No.83, Tilak Nagar from one Shri Viren Gandhi on rental basis and he has obtained agency of Vodafone. The

shop of accused No.6 is close to the residence of Farid Tanasha. Wanted accused Vijay Shetty gave him mobile numbers of accused No.2 and asked him to contact accused No.2 and also show him residence of Farid Tanasha. Wanted accused Vijay Shetty also asked accused No.6 to inform the movements of Farid Tanasha to accused No.2. Accordingly, he called accused No.2 and met him on few occasions. He also showed him the building where Farid Tanasha was residing, as also showed the map. Accused No.6 also collected Rs.10,000/- from accused No.9 Vishwanath Shetty and paid accused No.2 that amount. In the first week of April, he contacted wanted accused Vijay Shetty from mobile number 9004877967. Vijay Shetty in turn asked accused No.6 to collect Rs. 1 lac from one Laljibhai. He also used the documents submitted by the customers and after obtaining form of Idea Company, he collected two Sim cards. Sim card No.9594699924 along with Rs. 1 lac was handed over by accused No.6 to accused No.2. He retained another Sim card bearing No.9594746660. On number of occasions, wanted accused Vijay Shetty contacted him. On one such occasion, on the instructions of wanted accused Vijay Shetty, accused No.6 collected amount of Rs.3 to 3.50 lacs from accused No.9 Vishwanath Shetty. On 25.05.2010, the Sim card bearing No.9594699924 which was handed over by accused No.6 to accused No.2 was handed over to the applicant. On 28.05.2010, wanted accused Vijay Shetty contacted him to collect amount from the applicant and to handover the same to accused No.9 Vishwanath Shetty. Accordingly, he collected Rs.15 lacs from the applicant and handed over the same to accused No.9 Vishwanath Shetty. Accused No.2 contacted accused No.6 and informed that accused No.2 along with his associates came to Tilak Nagar at 11.00 a.m. on 02.06.2010. At that time, accused No.6 informed accused No.2 that the work assigned to him cannot be carried out at that time and asked accused No.2 to come at 9.30 p.m. At about 9.20 p.m., from mobile bearing No.9987519337, he contacted accused No.2 on mobile No.9987519320 and informed him that he is going to residence of Farid Tanasha and thereafter, he will give miss call. After miss call, accused No.2 was to come. Accordingly, he gave miss call to accused No.2. After some time, he got phone call from one Rizwan, associate of Farid Tanasha that firing at the residence of Farid Tanasha took place and that police have taken him to Rajawadi Hospital. From mobile No.9004877967, accused No.6 contacted Vijay Shetty on 0061290373184 and informed him that the work is done away. On 25.06.2010, he received phone on his mobile No.9819975367 informing him that wanted accused Vijay Shetty has demanded money. Accordingly, he collected amount of Rs.6 lacs from associate of accused No.9 Vishwanath Shetty.

37. In the case of *S. N. Dubey Vs. N. B. Bhoir*, **2000 (2) SCC 254**, the Apex Court has held that confession of the accused recorded under Section 15 of the TADA Act is a substantive piece of evidence which can be used even against the co-accused, if held to be admissible, voluntary and believable. The Apex Court referred to its earlier decision in the case of *State Vs. Nalini*, **(1999) 5 SCC 253**, wherein it is held that a confession recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. The said principles are reiterated by the Apex Court in the case of *State of Maharashtra Vs. Bharat C. Raghani*, **(2001) 9 SCC 1**. Prima facie, the confessional statements of accused No.2 and 6 are recorded by following due process of law. The statements are also prima facie admissible as they are voluntary and believable.

38. Perusal of transcripts of applicant's calls intercepted by the investigating agency shows that on 12.06.2010, applicant talked to

wanted accused Vijay Shetty from mobile No.9202171966 of accused No.2 Rajendra Chavan [running page 137 (printed page No.131)] and this is substantiated by call records at running page 177 (printed page 043). Sim Card No.9202171966 was seized from accused No.10 Rajendra Chavan. On the same day, applicant talked to wanted accused Vijay Shetty from Sim card No.9594699924. Applicant informed Vijay Shetty that he had paid Rs.10 lacs [running page 73 (printed page 029)]. This is substantiated by call records at running page 91 (printed page 083) as also mobile seizure panchanama at running page 96 bearing IMEI Number 359204004421080 in which same Sim card was used. On 10.06.2010 (printed page 007), from Sim card No.9594699924, applicant talked to wanted accused Vijay Shetty informing that he paid Rs. 15 lacs when Vijay Shetty was insisting minimum payment of Rs.25 to 30 lacs. This is substantiated by call records at running page 91 (printed page 083). Again on 10.06.2010, applicant talked to wanted accused Vijay Shetty from Sim card No.9202171966 as is evident from running page 133 (printed page 087) confirming that he had paid Rs.15 lacs. This is substantiated by call records at running page 175 (printed page 041). On 11.06.2010, applicant used Sim card No.9202171966 of accused No.10 and talked to wanted accused Vijay Shetty. This is substantiated by call records at running page 175 (printed page 041). On 23.06.2010, accused No.10 Rajendra Chavan talked to wanted accused Vijay Shetty from his Sim card No.9202171966 wherein applicant's reference was made. This is also substantiated by call records at running page 179 (printed page 045). On 17th and 18th June, 2010, accused No.10 talked to one Vinay, associate of accused No.9 from Sim card No.9202171966.

39. Thus, there is ample material on record to show that the accused No.6 and accused No.7 were constantly in touch. Applicant was also in

touch with the wanted accused – Vijay Shetty and in fact had used mobile of accused No.10 Rajendra Chavan. The said aspect was also considered in the earlier order. It is also evident from the confessional statement of accused No.6 that he had handed over Sim card bearing No.9594699924 to the applicant on 25.05.2010. Perusal of transcription of 10.06.2010 and 12.06.2010 shows that the applicant had discussion with wanted accused – Vijay Shetty from mobile No.9594699924. Transcription dated 10.06.2010 and 12.06.2010 of mobile No.9220171966 and statement of Sanjay Vasudev Mistry working as a driver with accused No.10 - Rajendra Chavan shows that applicant used mobile of Rajendra Chavan on 10.06.2010 as also on 12.06.2010. Perusal of transcription of 10.06.2010 shows that applicant informed Vijay Shetty that he had paid Rs.15 lacs. Transcription of 12.06.2010 shows that till that date, he had paid Rs.90 lacs and also reference is made to four members with whom applicant had dispute. Material on record shows that applicant was having Sim card No.9594699924 between 25.05.2010 and 12.06.2010. Transcription of 23.06.2010 between accused No.10 and wanted accused – Vijay Shetty also shows that name of the applicant was also referred during the course of conversation. Thus, perusal of the transcript of various dates shows that applicant was in constant touch with the other accused and wanted accused. The submission of Mr. Ponda that in fact applicant is victim of extortion is also not prima facie substantiated by material on record. The conversations were cordial and during the course of conversation, no threat was given to the applicant. Thus, from the material on record, prima facie, there are reasonable grounds in believing that applicant is guilty of offences of which he is being tried.

40. Mr. Ponda submitted that Farid Tanasha had a criminal record. He was connected with gangsters and the possibility of his having enmity

with other gangsters and rival group cannot be ruled out. In other words, he submitted that Farid Tanasha was eliminated because of gang rivalry and not because of the alleged motive of the applicant or the dispute raised by four members of the society with the applicant.

41. As I have already held that from the material on record, prima facie, there are reasonable grounds in believing that applicant is guilty of offences of which he is bring tried, I do not find any merit in the submission of Mr. Ponda.

42. As far as the change in circumstances is concerned, save and except the fact that the applicant is in judicial custody for more than four years, there is no change in circumstances. Applicant has not brought on record any change in circumstances, additional materials / further developments. I do not find any merit in this submission. In fact, after passing order dated 14.03.2012, there are no further developments and no details are furnished by the applicant for enlarging him on bail.

43. For the reasons recorded herein, I do not find that any case is made out for taking a different view from the view taken by me in order dated 14.03.2012 passed in Criminal Bail Application No.1502 of 2011. Hence, no case is made out for enlarging the applicant on bail. Application stands rejected.

(R. G. KETKAR, J.)

Minal Parab