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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2457 OF 2014

Kishore Alias Annu Shailendra Angre

Aged : 32 years, Occ:Business

R/o.Angre House, Datta Mandir Road,

Navi Mumbai.

(Presently Lodged at Thane Central Prison) ... Applicant

V/s.

The State of Maharashtra

(At the instance of Kasarvadavli Police Station

C.R.No.I.241 of 2013) ... Respondent

Mr.Mohammed Shine i/b MZM Legal, for the Applicant.

Mr.Y.M.Nakhwa, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 8th APRIL, 2015
PRONOUNCED ON: 8th MAY, 2015

ORDER :

1. By this application, the Applicant seeks his enlargement on bail, in connection with C.R.No.I-241 of 2013, registered with the Kasarvadavli Police Station, Thane, for the alleged offences punishable under Sections 307, 143, 147, 148, 149, 120(B) of the Indian Penal Code ; Section 37(1), 135 of the Bombay Police Act ; Section 3(1)(ii), 3(2), 3(4) of the MCOC Act.

2. The complainant is one Sujit @Tatya Madhukar Patil, the head of a gang and the present applicant (original accused no.8) is alleged to be the head of the rival gang. It is alleged by the prosecution that on 28th July, 2013 at about 11.00 p.m., the complainant – Tatya Patil was driving home in his Renault Duster Car, bearing registration no.MH 04 FZ 10. It is alleged that when he was parking the car near his house, the complainant who was in the car along with his friend – Pradeep Parihar, heard sounds of bullets being fired. The complainant and his friend are alleged to have seen 2 bikes on the left side of their car. On one bike, there were 2 persons and on the other bike, there was only one person. On seeing the bullets being fired, the complainant and his friend are alleged to have chased them in their car and dashed into them. Co-accused – Naresh Bodhane (Original Accused No.7) is alleged to have toppled from the bike. On seeing this, the complainant is alleged to have turned the car in the direction of the other biker, who also fell off the bike and sustained a head injury. It is alleged that the complainant left the spot, when the co-accused – Naresh Bodhane (Original Accused No.7) fired a bullet in his direction and on seeing an Innova Car, bearing registration no.MH 04 6009 speeding in his direction. Pursuant to the said incident, a complaint was lodged by the complainant – Tatya Patil as against the 3 bikers and

other unknown persons. It appears that Naresh Bodhane, who had fallen down from the bike was admitted to the City Life Hospital at Manpada. It also appears that the original complainant and his friend – Pradeep went to the hospital along with 10 to 15 persons and allegedly caused grievous injuries to Naresh Bodhane (original accused no.7) and also tried to kill him. Pursuant to the same, Naresh Bodhane (original accused no.7), also lodged a complaint/FIR as against the complainant – Tatya Patil and his gang, which was registered vide C.R.No.242 of 2013, as against the said persons alleging offences punishable under Sections 307, 325, 141, 143, 147, 148 and 149 of the Indian Penal Code. It is alleged by the prosecution that as the complainant – Tatya Patil had killed the father of Devendra Itadkar (original accused no.5) and had also assaulted one Yogesh Tare (original accused no.4), both the co-accused had a grudge against him. It is also alleged that the present applicant, as the head of the gang, felt that the complainant was trying to establish his supremacy in certain areas by indulging in extortion activities, over which they wanted to have a hold on, and hence wanted to eliminate him. Just before the incident, the complainant - Tatya Patil was released from jail, as he was enlarged on bail.

3. Learned Counsel for the Applicant submitted that the complainant – Tatya Patil himself was a leader of another rival gang and was in jail for about 2 ½ years. He submitted that when the complainant – Tatya Patil, reached his residence, after being released from Jail, the present incident is alleged to have taken place. He submitted that in all there were 10 accused who have been arrested in the said case. Learned Counsel for the Applicant relied on several Judgments in support of his contentions. The five principle submissions made by the learned counsel for the applicant; are firstly ; that the applicant has not been named in the FIR and has been falsely implicated subsequently in the said case ; secondly ; that the confessional statement of the applicant recorded under Section 18 of the MCOC Act was retracted on the very same day, when the applicant was produced before the learned Magistrate i.e. on 19th March, 2014. He submitted that there is non-compliance of Section 18(3),(4) and (5) of the MCOC Act. According to him, it is not a confession which is retracted but it is an 'aborted confession'. He submitted that there are several lacunae in recording of the confession, inasmuch as, the applicant was asked questions in Hindi, however, his statement was written in Marathi ; that the certification is on a different page; and that the voluntariness of the confession has not been verified. Thirdly, he submitted that the recovery of

a country made pistol, under Section 27 of the Evidence Act was not in conformity with the provisions of Section 23 of the MCOC Act, inasmuch as, it was recorded by the Senior Police Inspector and not by an ACP or a Dy.S.P., and as such, the Officer who has effected the recovery, was not competent to do so. He submitted that the provisions of the MCOC Act were applied on 25th October, 2013, the applicant was arrested on 25th February, 2014 and the recovery at his instance was after MCOC Act was applied to the case. Hence, according to the learned counsel, the officer who was instrumental in the recovery of the country made pistol was not competent to investigate the same in view of Section 23 of the MCOC Act. Fourthly, he submitted that the two alleged eye-witnesses i.e. witness nos.12 and 13, whose statements have been recorded to prove the alleged conspiracy hatched by the applicant with other co-accused, have not identified the applicant in the identification parade; and lastly, it was submitted that no bullet was recovered from the spot as is evident from the spot panchanama and hence recovery of the pistol, at the instance of the applicant is inconsequential.

4. Per Contra, learned APP vehemently opposed the bail application. He submitted that there is ample evidence and material on record to show

the complicity of the present applicant. Learned APP also relied on several Judgments in support of his submissions. He submitted that the confession of the applicant recorded under Section 18 of the MCOC Act, clearly shows his complicity in the said crime. He further submitted that there is recovery under Section 27 of the Evidence Act of a country made pistol and four live cartridges, at the instance of the applicant. According to him, although the spot panchanama does not show that any bullet was found at the spot, however, subsequently, a bullet was brought by a witness, which was seized under a panchanama and both, the bullets as well as the seized country made pistol along with live cartridges have been sent to the ballistic expert for analysis and the report is awaited. He further submitted that the evidential value of the confession, as to whether it is retracted confession or aborted confession; or whether the officer was competent to effect the recovery under Section 23 of the MCOC Act, is a matter which will be considered by the Trial Court, at the time of recording of the evidence. He submitted that *prima-facie* the aforesaid confession recorded under Section 18 of the MCOC Act coupled with recovery of country made pistol along with live cartridges at the instance of the applicant, as well as the statement of witness nos.12 and 13 who have disclosed that they had witnessed the applicant and others

hatching a conspiracy, *prima-facie* shows that the applicant is guilty of the offence with which he has been charged. He submitted that the fact, that the applicant had not been identified in the identification parade, would not in any way be a factor in favour of the applicant, as both the witnesses i.e. witness nos.12 and 13 have categorically stated that they knew the applicant for several years and have named the applicant by name. He further submitted that there are 23 cases registered as against the applicant, who is a leader of the gang and that the applicant was absconding for a year, till he was arrested on 25th February, 2014. He submitted that infact, after the commission of the aforesaid offences, the applicant had committed another offence i.e. prior to his arrest on 25th February, 2014. In addition to the aforesaid material, the learned APP submitted that the confession of the applicant is corroborated by the confession of the co-accused – Siddharth @Siddhu Jaiprakash Pawar, Naresh Bodhani and Mohammad Aslam Mustafa Shaha, although the said confessions have also been retracted by the accused. He submitted that considering the material on record, the bar under Section 21(4) of the MCOC Act would clearly operate and hence prayed for rejection of the applicant's bail application.

5. Heard learned counsel for the applicant and the learned APP at length. Perused the charge-sheet. With regard to the first submission that the confession of the applicant is an aborted confession and not a retracted confession, it is pertinent to note that the said confession of the applicant has been recorded under Section 18 of the MCOC Act. A perusal of the said confessional statement of the applicant shows how the applicant was involved in extortion activities and how cases came to be registered as against him. The applicant has stated that he was doing the business of collecting (reti) and was supplying sand at various construction sites. He has stated that the complainant was also a leader of another rival gang and was also involved in the same activities and was a supplier of sand. He has also given in detail, how in the last 6 to 7 years he had become the head of the gang. He has stated how they would use different mobile phones and different SIM cards and after a few days, how they would discard the SIM cards. He has also disclosed that he used to instruct the members of his gang not to speak on the mobile phones as the police could tap the phones and instead how messages should be passed on to him. He has stated in the said confession that in the first week of June 2013, Naresh Bodhane had brought Aslam Mustafa Shah, Dharmesh Panchal and Santosh Sane and that Yogesh Tare had brought

Anil Mhatre and Devendra Itadkar for a meeting at the Twin Hotel. After two days, the applicant himself along with his brother and others had gone to the Twin Hotel. He had stated that when he went to the Twin Hotel, he met Naresh, Aslam, Dharmesh, Santosh, Anil, Yogesh and Devendra. In the said meeting the applicant is alleged to have stated that the complainant had started doing a lot of 'dadagiri' in Bhiwandi, Ghodbunder, Kopar and other areas and was trying to establish his primacy by doing extortion in the said areas and that as Tatya Patil had murdered Devendra's father, they had to eliminate Tatya Patil. The applicant had allegedly stated that if Tatya Patil is eliminated, then the extortion money which was collected by Tatya Patil in the Warai area, could be collected by them, resulting in huge earnings. Devendra is alleged to have stated in the said meeting, that an amount of Rs.10 lacs should be given to the contract killers, to kill Tatya Patil. Accordingly, the applicant introduced Aslam, Dharmesh, Santosh and Naresh as shooters to Devendra, Anil and Yogesh. For the weapons, the applicant was to give advance money. The applicant is also alleged to have stated to the co-accused, not to speak on the mobile, as the police could tap the phones and that if any message was to be passed, the same should be done, through Yogesh or Naresh. Accordingly on 17th July, 2014, after a

meeting between the accused at Hotel 'Atithi' as disclosed by the applicant that Tatya Patil should be killed, Devendra gave a photograph and Rs.1 lac to Aslam, Dharmesh, Naresh and Santosh. Thereafter, Santosh is alleged to have met the applicant, and the applicant is alleged to have given 3 pistols, 1 country made pistol and cartridges. After two or three days, the applicant along with Siddhu Pawar, Kondu Yadav and Rahul Angre are alleged to have shown Aslam, Dharmesh, Santosh, Naresh, the residential house of Tatya Patil, where the Renault Duster Car, bearing registration no.MH 04 FZ 10 would be parked. In his confession, the applicant has further stated that the plan was executed, however the same was unsuccessful. The applicant is stated that after the said unsuccessful attempt, he personally met the other co-accused who disclosed to him what had happened, pursuant to which the applicant told them not to speak on their mobile phones. He has further stated that the pistols which he had given to the aforesaid persons for eliminating Tatya Patil were taken back by him.

6. A perusal of the said statement shows that the applicant has signed on every page of the confession. Whether or not, the confession is an aborted confession or a retracted confession, whether the confession was

voluntary or not, or whether it was obtained by force, is a matter which will be decided by the trial court. *Prima-facie* the confession sets out the manner and the detailed activities of the applicant as well as the conspiracy hatched by the applicant and the other co-accused for eliminating the complainant –Tatya Patil. The applicant has signed the said confession on every page. The said confession of the applicant is corroborated by the confessional statements of Siddhu Jaiprakash Pawar, Naresh Bodhane and Aslam Mustafa Shah also recorded under Section 18 of the MCOC Act. The said confessions although retracted at the first opportunity, the evidentiary value of the said confession will also be tested by the trial judge, during trial. The aforesaid two eye-witnesses i.e witness nos.12 and 13, have categorically stated in their statement dated 5th December, 2013, that the applicant and the other co-accused were known to the witnesses as their photographs with names were put up on every poster on every naka. Both the witnesses, have categorically stated that they had gone to Kopri, Thane for some work and had visited the Hotel 'Twin' for snacks. It is alleged by the witnesses, that the present applicant and the other co-accused were sitting in an A.C. room and were discussing. They have alleged that the present applicant was saying that 'bhaigiri' of Tatya Patil had increased and have he had taken over the

entire area of Varai, as a result of which they were suffering financial losses, and that if Tatya Patil was killed they would have an upper hand in that area. It is alleged that at that time Devendra is alleged to have stated that his father was killed by Tatya Patil and hence Tatya Patil should be eliminated. They have stated that due to fear, they had not disclosed the same to any persons. Although, both the witnesses who had heard the hatching of conspiracy to kill Tatya Patil have not identified the present applicant, it is pertinent to note from a perusal of their statements (i) that they had seen the photographs of the applicant on various posters with his name and (ii) that they have specifically named the applicant, hence it was not necessary to hold an identification parade. In this background, *prima-facie* nothing much turns on the fact, that the applicant has not been identified, more particularly when the statement of both the eye-witnesses show, that they knew the applicant by name and have stated how the applicant was familiar to them. As far as the evidence of recovery of a country made pistol and live cartridges, under Section 27 of the Evidence Act is concerned the submission that it is not done by an officer as contemplated under Section 23 of the MCOC Act, is a matter, which will be decided by the trial court. According to the learned APP, the Additional Commissioner of Police by an order had authorised the

Senior Police Inspector to assist the ACP in the investigation and as such contended that there was no infirmity in the recovery which was effected under Section 27. *Prima-facie* there is a recovery of a country made pistol with 4 live cartridges, at the instance of the applicant. The said cartridges along with a cartridge which was handed over by a witness from the spot and seized under a panchanama are sent to the chemical analyzer and the report is awaited. Merely, because nothing was found on the spot, as is reflected in the spot panchanama would not lead to a conclusion that no firing took place. It also appears that the applicant has 23 cases registered as against him. Although, in some cases he has either been discharged or acquitted, the fact remains that there are several cases which are registered and are pending against him. In addition, whilst on bail, the present offence has been committed. It also appears that after the commission of this offence, the applicant is alleged to have committed another offence i.e. C.R. No.229 of 2013, for the alleged offences punishable under Sections 307, 143, 147, 148, 149 ; Sections 3, 25 of the Arms Act ; Section Section 37(1), 135 of the Bombay Police Act.

7. Considering the aforesaid material on record, as against the applicant and the bar of Section 21(4) of the MCOC Act, it cannot be said

that there are no reasonable grounds for believing that the accused is not guilty of an offence nor is it possible to come to a conclusion that the applicant is not likely to commit an offence, if enlarged on bail. However, considering the peculiar facts of the case, that the offence is essentially one under Section 307 and that the applicant has been in custody for more than one year and the sentence that can be eventually awarded, if the case against the applicant is proved, the trial is expedited.

8. Accordingly, the application for bail is rejected and disposed of as such. However, the trial is expedited. The Trial Court shall make an endeavour to conclude the trial, as expeditiously as possible, and preferably within one year from the date of receipt of this order.

9. Needless to observe, that the trial court shall decide the case on its own merits, uninfluenced by the observations made in this order.

10. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)