

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

CRIMINAL APPLICATION NO.580 OF 2016

Ganesh s/o Shanil Pimple,
Age 25 years, Occu. Labour,
R/o village Naigaon,
Taluka Gangapur,
District Aurangabad

..Applicant

Versus

The State of Maharashtra,
through the Assistant Commissioner
of Police (Crime), Commissioner
Office, Aurangabad

..Respondent

Mr A.S. Shejwal, Advocate for applicant
Mr K.D. Mundhe, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 18th February 2016

PER COURT

Heard.

2. The applicant is seeking regular bail in Crime No.25 of 2015 registered at Chavani Police Station, for the offences punishable under Sections 395, 397 of Indian Penal Code and under Sections 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'M.C.O.C.' Act for brevity).

3. While trying to make out the case for grant of regular bail, learned Counsel for the applicant would urge that the applicant was booked under M.C.O.C. Act in view of pendency of three offences against him i.e. Crime No.206 of 2009 registered with Osmanpura Police Station, Aurangabad, for the offences punishable under

Sections 324, 323, 504 read with sec.34 of Indian Penal Code, Crime No.17 of 2015, for the offences punishable under Section 392 read with sec.34 of Indian Penal Code, registered at Waluj Police Station and Crime No.25 of 2015, for the offences punishable under Section 395, 397 of Indian Penal Code and under Sections 3 (1) (ii), 3 (2), 3 (4) of the M.C.O.C. Act.

4. Learned Counsel for applicant then would urge that so far as Crime No.206 of 2009 is concerned, he is already acquitted of in the said crime and has placed on record the judgment of acquittal. He would further urge that there is no appeal preferred against the judgment of acquittal. He would further urge that so far as Crime No.25 of 2015 is concerned, even if the chain was recovered from the applicant, however, in identification parade, he was not identified. According to learned Counsel for the applicant, the confession recorded pursuant to the provisions of Section 18 of the M.C.O.C. Act of accused Rajan Nagraj Kale was made available to accused persons and applicant is not named in the said confessional statement. As such, according to him, the applicant cannot be held responsible for commission of crime in question. In addition, he has relied upon the judgment of Apex Court in the matter of **Prasad Shrikant Purohit Vs. State of Maharashtra and anr., reported in 2015(3) Bom.C.R. (Cri.) 92.** He would then urge that paragraph 98, 99 and 100 of the said judgment are required to be considered in favour of present applicant.

5. Learned A.P.P. opposed the application on the ground that it is during the investigation, the investigating agency has noticed a syndicate formed by the accused persons, of which the present applicant is active member and the syndicate was giving effect to commission of crime with a common intention. All the crimes, which are relied upon for invoking the M.C.O.C. Act are having financial implications and the applicant is claimed to have played active role in commission of crime in question. He would then urge that the applicant Ganesh along with his father Shanil and brother Sunil are also accused persons and as such depicts criminal intention of the applicant. He would then urge that as the chain is recovered under the provisions of Section 27 of the Evidence, there is likelihood of tampering the evidence and pressurising the witnesses.

6. I have perused the investigation papers. No doubt, there are more than one crime pending against the syndicate, however, so far as applicant is concerned, there are two crimes pending against him. It is required to be noted that the applicant was not identified in Crime No.25 of 2015 nor named in a confessional statement of one of the accused namely Rajan Nagraj Kale. He is also acquitted of in Crime No.206 of 2009, which was formed to be the basis for invoking the provisions of M.C.O.C. Act against him.

7. It is required to be noted that the Apex Court, while dealing with the issue as regards the consideration of bail in paragraph 100 of the judgment in the matter of Prasad Vs. State (cited supra), has observed thus :

“100. When once we are able to steer clear of the said position, the other question to be considered is the grant of bail on its own merits. For which purpose, the submission of Mr Mariarputham, learned Senior Counsel who appeared for the State of Maharashtra and NIA based on the decision relied upon by him in (State of U.P. Through CBI Vs. Amarmani Tripathi) 29, 2006 (8) S.C.C. 21 should be kept in mind, in particular paragraph 18, which reads as under :

18. It is well settled that the matters to be considered in an application for bail (i) whether there is any prima facie or reasonable ground to believe that the accused had committed offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail see (Prahlad Singh Bhati Vs. NCT, Delhi) 30, 2001 Bom. C.R. (Cri) 727 (S.C.) : 2001 (4) S.C.C. 280 and (Gurcharan Singh Vs. State (Delhi Admn.)) 31, A.I.R. 1978 S.C. 179. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in (Kalyan Chandra Sarkar Vs. Rajesh Ranjan) 32, 2004 (2) Bom.C.R. (Cri.) 404 (S.C.) : 2004 (7) S.C.C. 528 (S.C.C. pp. 535-36, para 11)

11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the Court in support of the charge. See (Ram Govind Upadhyay Vs. Sudarshan Singh) 33, 2002 (3) S.C.C. And (Puran Vs. Rambilas) 34, 2001 Bom.C.R. (Cri.) 830 (S.C.)”

8. In my opinion, if the above referred observations are taken into account qua the facts and evidence of the case in hand, same raises a doubt as regards severity of punishment and the involvement of the applicant in the crime in question.

9. Accused-applicant in this case is charged with offence punishable under Sections 395 and 397 of the Indian Penal Code i.e. Dacoity with attempt to cause death. I have tried to assess the gravity of the offence from the medical and documentary evidence as against this accused. The weapon used in this crime is wooden stick. The nature and gravity of charge, the severity of punishment.

10. As such, it will be inappropriate to detain the applicant further under the provisions of M.C.O.C. Act.

11. As such, Criminal Application stands allowed. The applicant be released on bail in Crime No.25 of 2015 registered at Chavani Police Station, for the offences punishable under Sections 395, 397 of Indian Penal Code and under Sections 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crime Act, 1999, upon furnishing P.R. Bond of Rs.50,000/- with two sureties.

12. The applicant shall not enter the jurisdiction of Aurangabad District, but for attending the Court proceedings.

13. The applicant shall not tamper or pressurise the witnesses.

14. The applicant shall not commit or involve in any fresh offence. If it is brought to notice of this Court that applicant has involved himself in fresh offence, this Court, upon application of prosecution under Section 39 (2) of Cr.P.C. will be constrained to cancel the bail.

15. If it is noted that any of the above condition is jumped by the applicant, the prosecution will be liberty to move for cancellation of bail.

(N.W. SAMBRE, J.)

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