IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.217 OF 2015
IN
CRIMINAL APPEAL NO.216 OF 2015

RAVI SRICHAND PUNJABI)...APPLICANT
V/s.
THE STATE OF MAHARASHTRA)...RESPONDENT

AND

CRIMINAL APPLICATION NO.1104 OF 2015
IN
CRIMINAL APPEAL NO.1072 OF 2015

NARENDRA MANBAHADDUR SONI @ LALA)...APPLICANT
V/s.
THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.N.N.Gawankar a/w. Mr.Manas Gawankar, i/b. Mr.Manoj Badgujar, Advocate for the Applicant in Criminal Application No.217 of 2015.

Mr.Aniket Vagal, Advocate for the Applicant in Criminal Application No.1104 of 2015.

Mrs.A.S.Pai, Spl.P.P. for the Respondent - State.

CORAM : P. N. DESHMUKH, J.

DATE : 19th OCTOBER 2016 &
20th OCTOBER 2016.

ORAL ORDER :

1 Original accused no.7 Ravi Punjabi and original accused no.4 Narendra Soni having been convicted in M.C.O.C. Special Case No.12 of 2010 have filed these applications for suspension of substantive sentence imposes upon them and for their release on bail.

2 Learned Special Judge by judgment dated 3rd February 2015 convicted applicant Ravi Punjabi -

i) for the offence under Section 387 read with Section 120(B) of the IPC and is sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for 1 year;

ii) for the offence under Section 3(2) of M.C.O.C.Act and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5 Lakh, in default, to suffer simple imprisonment for 3 years;

iii) for the offence under Section 3(4) of M.C.O.C.Act and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5 Lakh, in default, to suffer simple imprisonment for 3 years;

and convicted applicant Narendra Soni -

i) for the offence under Section 387 read with Section 120B of IPC and is sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for 1 year;

ii) for the offence under Section 307 read with Section 120(B) of IPC and is sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for 1 year;

iii) for the offence under Section 3(2) of M.C.O.C. Act and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5 Lakh, in default, to suffer simple imprisonment for 3 years;

iv) for the offence under Section 3(1)(ii) of M.C.O.C.Act and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5 Lakh, in default, to suffer simple imprisonment for 3 years;

v) for the offence under Section 3(4) of M.C.O.C. Act and is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5 Lakh, in default, to suffer simple imprisonment for 3 years.

Substantive sentences imposed upon both the appellants as aforesaid, are directed to run concurrently.

3 Before considering these applications, this court had proposed learned counsel for applicants to consider final hearing of the appeals itself, in view of the fact that more than 60% of sentence imposed upon appellants is undergone by the respective appellants. However, by consent, applications are decided to be heard, pending appeals.

Heard learned counsel for applicants as well as learned Spl.P.P. at length. Learned counsel for applicants had advanced submissions mainly on two grounds. Firstly, that both the applicants by now have completed more than 6½ years of imprisonment, and as such, their applications be allowed on this count alone as possibility of their appeals coming up for final hearing is less, in view of pendency of old appeals. In addition to above, further ground put forth on behalf of applicants is non-application of provisions of M.C.O.C. Act, as according to the learned counsel for applicants, though it is the case of prosecution that two charge-sheets are filed before the competent court, of which cognizance is taken by the concerned courts, admittedly, neither of these applicants are accused or wanted accused shown in those charge-sheets, and has thus submitted that prosecution as such, had not complied with the statutory requirement as contemplated under Section 2(1)(d) of M.C.O.C. Act, 1999.

4 On the aspect of applicants having undergone punishment of about 6 years and 6 months, applicants have relied upon following authorities :-

a) **Ramnik Singh vs. Intelligence Officer DRI. (Cri.Appeal No.165 of 2013)**

b) **Inderjit Singh vs. State of Punjab Criminal Appeal No.2292 of 2009**

c) **Dhiren Ghanshyam Mehta vs. Union of India Cri.Appln.No.487 of 2013 in Criminal Appeal No.202 of 2013**

d) **Nazim Hasan Rizvi vs. State of Maharashtra Criminal Application No.5181 of 2003 in Criminal Appeal No.1343 of 2003**

e) **Abdul Rahim Allabux Khan vs. State of Maharashtra Criminal Application No.4068 of 2003 in Criminal Appeal No.1340 of 2003**

f) **Rameshkumar Hirani vs. State of Maharashtra Criminal Application No.5517 of 2004 in Criminal Appeal No.282 of 2004**

g) **Abdul Rehman Shaikh vs. State of Maharashtra Criminal Application No.796 of 2007 in Criminal Appeal No.648 of 2007**

h) **Nitin Tanaji Bhosale vs. State of Maharashtra Criminal Application No.353 of 2011 in Criminal Appeal No.842 of 2009**

i) **Ramesh Chunilal Kisani vs. State of Maharashtra Criminal Application No.2579 of 2003 in Criminal Appeal No.39 of 2003**

j) **Gulam Akbar Abdul Sattar Khotal vs. State of Maharashtra Criminal Application No.871 of 2016 in Criminal Appeal No.341 of 2016**

5 Mr.Gawankar for applicant Ravi on merits had submitted that said applicant came to be arrested on 5th September 2010, while the confessions of accused nos.3 Paresh Nepali and 5 Hargbahadur Bhandari are recorded on 25th September 2010 and second part is recorded on 27th September 2010 respectively.

Similarly, it is contended that statements of PW18, PW19, PW22, PW23 and PW24 which are mainly relied by prosecution to establish charge under the provisions of M.C.O.C. Act, are recorded after the arrest of applicant Ravi and has therefore submitted that as applicant was already arrested much prior to recording confessions and statements of witnesses as aforesaid, they were suitably got recorded by the investigating agency so as to falsely nail applicant Ravi in the present crime.

It is further contended that infact from statement of all these witnesses, no role can said to be assigned to applicant Ravi, who even otherwise, as per case of prosecution was not present on the spot of incident where firing took place. It is thus submitted that case against said applicant is based on circumstantial evidence. However, circumstances relied upon by prosecution do not establish involvement of applicant as same are full of doubts, and do not prove unbroken chain of circumstances.

6 Similar are the arguments advanced by Mr.Vagal, learned counsel for applicant Narendra, who has adopted the submissions as well as case law relied on behalf of applicant Ravi referred above and has also adopted submissions of learned counsel Mr.Gawankar on the point of non-application of provisions of M.C.O.C. Act, and for that purpose has relied upon the cases of **Mahipal Singh vs. Central Bureau of Investigation and Another** with **Central Bureau of Investigation and Another vs. Mahipal Singh (2014) 11 Supreme Court Cases 282**. In the circumstances, it is submitted that both the applications are liable to be allowed by imposing suitable conditions upon the applicants.

7 Learned Spl.P.P. Mrs.A.S.Pai had opposed the applications. With regard to the case of applicants of their release on bail on the count of their undergoing half of the sentence, learned Spl.P.P. had submitted that, this by itself, can be no ground to allow the applications, particularly, in view of bar of sub-section 4 of Section 21 of M.C.O.C.Act. It is her contention that unless the applicants establish their case beyond above stated statutory provisions, their applications cannot be considered merely because they have undergone more than half of their sentence. For that purpose, learned Spl.P.P. has relied upon

case of **Dadu alias Tulsidas vs. State of Maharashtra with Jiti vs. Union of India (2000) 8 Supreme Court Cases 437** and on the following cases : -

a) **Union of India vs. Ratan Malik @ Habul (2009) 2 SCC 624**

b) **Union of India vs. Shivshankar Kesari (2007) 7 SCC 798**

c) **Sunilkumar Shinha vs. State of Bihar & Anr. (2010) 3 SC(Cri)299**

d) **Sachin Gajanan Shetye vs. State of Maharashtra (2010) All Mah. Report (Cri) 3898**

e) **State of Maharashtra vs. Vishwanath Maranna Shetty (2012) 10 SCC 561**

8 While arguing the applications on merits and on the point of application of provisions of M.C.O.C. Act, learned Spl.P.P. has referred to paragraph 156 of the judgment of Special Court and has supported the same and has referred to material evidence on record to establish involvement of applicant Ravi which is in the form of evidence of PW17, PW18, PW19, PW22, PW23, PW24 and PW37 along with confessional statements of accused nos.3 Paresh Nepali and 5 Hargbahadur Bhandari.

9 For establishing involvement of applicant Narendra, learned Spl.P.P. has referred to above confessional statements and has submitted that from these statements, though retracted, it is established by prosecution that applicant Narendra was part of conspiracy hatched between him and other co-accused one day prior to the incident of firing at the jewelery shop, as presence of said applicant is found on the spot which is further found substantiated by evidence of PW37 the owner of the shop, as well as PW2 Prashant - the victim and Manager, and PW3 Manmohan - watchman of the shop, and Investigating Officer who has established C.C.T.V. footage wherein presence of said applicant is noted. It is thus submitted that having considered available material on record both the applications deserve to be dismissed.

10 In the background of submissions advanced as aforesaid together with legal submissions, it is to be noted that, when the prosecution is for the offence under the special statute and that statute contains special provisions for dealing with matters arising thereunder, those provisions cannot be ignored while dealing with such applications, since applicants are found charged with offences punishable under provisions of M.C.O.C. Act, while dealing with these

applications for grant of bail, in addition to the broad principles to be applied in prosecution for the offence under IPC, the relevant provisions under M.C.O.C. Act namely under Section 21(4)(a) are required to be kept in mind. In this backdrop, it is necessary to consider first limb of the arguments advanced for applicants, with regard to their undergoing more than 6½ years of imprisonment, and as such, their entitlement for bail.

11 Admittedly, both the applicants have undergone about 6½ years of imprisonment including remissions. In the case of **Ramnik Singh cited supra**, appellant was convicted for the offence punishable under Section 21 of NDPS Act and was sentenced to undergo rigorous imprisonment for 10 years, out of which he had undergone sentence of 5 years 4 months 7 days and in that circumstance, considering that possibility of appeal to be taken up for hearing in near future was remote, application was allowed. The Apex court in this case has made it clear that the matter was not considered on merits.

12 In the case of **Gulam Akbar Abdul Sattar cited supra**, the Division Bench of this court suspended sentence imposed upon applicant under Section 3(3) and 4 of Prevention of Terrorism Act,

2002, (P.O.T.A.) and under Section 5(a) of Explosive Substances Act, 1908. Maximum sentence imposed was of 10 years under P.O.T.A., and observing that due to pendency of old appeals there is no likelihood of appeal being heard in near future, same was suspended.

13 Similarly, in the case of **Inderjit Singh cited supra**, accused was convicted for 10 years for an offence punishable under Section 15 of NDPS Act and had undergone 8½ years of sentence, and was thus considered to be entitled to be released on bail as his appeal was unlikely to be taken up for early hearing.

14 Similarly, this court while considering Criminal Application no.1069 of 2010 in Criminal Appeal No.75 of 2006 for bail for the offence punishable under Section 302 of IPC punishable with life imprisonment had considered that as applicant therein had undergone more than 50% of sentence, relying upon law laid down in the case of **Kashmira Singh vs. The State of Punjab** reported in **AIR 1977 SC 2147** allowed the application observing that appeal would not come up for hearing in the near future for another four years.

So also, the case of **Nitin Tanaji Bhosale case cited supra**, Division Bench of this court had considered release of applicant on bail on similar considerations, who was sentenced for imprisonment of 10 years for the offence punishable under Section 304(I) of IPC. It is to be noted that other authorities relied for applicants suspension of sentence, being in case of **Dhiren Ghanshyam Mehta**, **Nazim Hasan Rizvi**, **Abdul Rahim Allabux Khan**, **Rameshkumar Hirani**, and **Abdul Rehman Shaikh**, are all of Co-ordinate Benches of this court wherein on similar considerations, applicants were considered to be released on bail.

15 Having considered law relied upon on behalf of applicants as aforesaid, thus, it is noted that in neither of these cases, statutory provisions of Section 24 of M.C.O.C. Act are considered.

16 As against this, learned Spl.P.P. Smt.Aruna Pai, relied upon the case of **Dadu alias Tulsidas cited supra** wherein the Hon'ble Apex Court considered scope of bar of Section 37 of NDPS Act, and has relied on the case of **Union of India vs. Ram Samujh** reported in **(1999) 9 SCC 429** wherein it is held that the jurisdiction of the court to grant bail is circumscribed by the aforesaid Section of the Act. The bail can be granted and sentence suspended in a case where there are reasonable grounds for believing that the accused is not guilty of the

offence for which he is convicted and he is not likely to commit any offence while on bail and during period of suspension of the sentence, and has in paragraph 28 of its judgment has observed thus -

> "It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and / or dealing in intoxicants clandestinely."

17 Above cited pronouncement of Hon'ble Apex Court considering bar of Section 37 as provided in NDPS Act of 1985, has to be considered while considering both these applications for bail, in the

light of provisions of Section 21(4) of M.C.O.C. Act which are in para-materia with the provisions of Section 37 of NDPS Act, and thus, it is necessary to see if there are reasonable grounds for believing that the accused are not guilty of offence for which he is convicted and are not likely to commit any offence while on bail and during period of suspension of sentence. The authorities relied upon by learned APP in the cases of **Union of India vs. Ratan Malik @ Habul** and **Union of India vs. Shivshankar Kesari** are on the same lines, wherein, while considering applications for grant of bail, the Hon'ble Apex Court had duly considered nature and scope of Section 37 of NDPS Act and had held that, apart from giving an opportunity to the Public Prosecutor to oppose bail application, the other twin conditions which are set out in this Section are :

(i) The satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence;

(ii) That he is not likely to commit any offence while on bail, had to be satisfied.

18 In the case of **State of Maharashtra vs. Vishwanath Maranna Shetty** the Hon'ble Apex Court held :

> "A bare reading of the non obstante clause in Section 21(4) of M.C.O.C.A. indicates that the power to grant bail to a person accused of having committed offence under he said Act is not only subject to the limitations imposed under Section 439 Cr.P.C., 1973, but also subject to the restrictions placed by Sections 21(4)(a) and (b) of M.C.O.C.A."

In view of above stated provisions, both these applications are thus not only considered on the aspect of applicants entitlement for bail or their undergoing more than half of the sentence, including remission, but the same are also considered on merits to satisfy if applicants fulfill the requirement of Section 21(4)(a).

19 From the material placed on record, it appears to be the case of prosecution that the applicants are members of Organized Crime Syndicate, managed by absconding accused. According to learned APP, material on record would indicate that the applicants are working for the wanted accused and are in association with him, who is a notorious criminal and has thus submitted that the acts of applicants come within the definition of "abet" as defined in Section 2(1)(a) of

the M.C.O.C.Act. In view of case of prosecution as aforesaid, it is to be satisfied, if the material placed on record by the prosecution show that applicant had received any ill-gotten money from the wanted accused or were working for him, and if such evidence is on record, it can be said that ingredients of sections applied against applicants can said to be attracted. However, at the same time, it is to be borne in mind, that at this stage the court is not called upon to record finding of "not guilty." Similarly, it is neither necessary nor desirable to scrutinize the evidence meticulously to arrive to a possible finding as to whether or not applicants have committed the offence for which they are charged for; but what is required to be seen is, whether, there are reasonable grounds to believe that applicants are not guilty of the offences, and further that, they are not likely to commit an offence under the Act, if released on bail.

20 Keeping in mind above aspect of present applications, I had perused the record with the assistance of learned counsel for both the sides. It appears to be the case of prosecution that on 14th July 2010, PW2 Prashant and PW3 Manmohan, Manager and Watchman respectively, working with Nautandas Jewelers, attended their duties, when at about 13.30 hours, three unknown persons arrived at the shop

and inquired from Manmohan about its owner Mahesh, when Prashant the Manager intervened those persons, when one amongst them all of a sudden opened fire with shot arm on Prashant due to which he sustained injury on the left side of his chest. All the assailants ran away from the spot by throwing the weapon on the spot. On the basis of report, offence was registered vide Crime No.252 of 2010 for the offence under IPC and Arms Act and on recording confessional statement of accused nos.1 to 4, who came to be arrested on 5th September 2010, matter was referred for investigation to DCB CID, Zone IX, where Crime no.83 of 2010 came to be re-registered and was investigated by Anti Extortion Cell. During the course of investigation, from statements of such persons recorded under Sections 161 and 164 of Cr.P.C., it revealed that absconding accused Ravi Poojari was involved in extending threats to jewelers, estate agents, builders, to extort money, and on the basis of such statements, further arrest came to be effected. Considering nature of involvement of accused as aforesaid, on obtaining approval from the Competent Authority, investigation was carried out under M.C.O.C.Act, and it was found that the incident of firing which took place in the jewelery shop was a planned conspiracy hatched by absconding accused Ravi Poojari, leader of Organized Crime Syndicate, for extorting money from PW37 Mahesh Jagwani - owner of the shop and as a part of said conspiracy, applicant / accused no.4 Narendra along with original accused nos.1 and 2 fired at the shop. Both the applicants are found to have acted as members of Organized Crime Syndicate and as such, have abetted and aided for commission of crime along with other co-accused.

21 In the background of facts as aforesaid, and to satisfy prima facie involvement of applicants, I have perused the documents on record if it established involvement of applicants and for that purpose, had considered confessions of accused nos.3 Paresh Nepali and 5 Hargbahadur Bhandari which are recorded on 25th September 2010 and evidence of PW17. It is material to consider this piece of evidence as the confessions and statements as aforesaid, are recorded prior to arrest of applicant Ravi Punjabi on 2nd October 2012. Along with above material, other evidence which needs consideration is evidence of PW18, PW22, PW23, PW24 and PW27, particularly in view of the case of applicant Ravi Punjabi, that he is falsely involved by the investigating agency, as statements of above witnesses came to be recorded after his arrest.

22 The confession of accused no.5 Hargbahadur Bhandari, though retracted, when considered is that during March 2010 he came in contact with some boys including absconding accused Koras Thapa and co-accused Rajendra, who were in contact with applicant Ravi Punjabi and were working for him. Said persons informed accused no.5 that he should visit to the address provided to him by them, in Mumbai, along with telephone number of applicant Ravi Punjabi and also informed that by opening fire on builders they get scared and part away with money.

23 It was further stated that approver examined as PW1 Sunil Shetty was working as a Manager for applicant Ravi Punjabi and co-accused Rajiv Nepali in his presence contacted applicant and PW1 Sunil Shetty and spoke with them on phone and at the same time, absconding accused Koras Thapa also spoke with them. It is further stated that as accused no.5 thought, that by working with applicant he would earn good amount of money, he decided to join the syndicate after making inquiry as to who would take care, if he is arrested at the time of incident of firing, upon which he was informed by co-accused Nepali, who is working for co-accused Ravi Punjabi, that applicant can arrange for all the things.

Accordingly, in the first week of June 2010, he arrived in Mumbai and along with co-accused and absconding accused went to Khar area, and contacted applicant on phone. On the point of incident it is confessed that while firing was opened by Rajkumar, he was present in the auto rickshaw across the road along with absconding accused Thapa, and thereafter all of them went to Borivali and then to Ahmedabad, for which he received 18,000/- and was informed that further amount would be sent to him by Manager of absconding accused Ravi Poojari.

From further statement, involvement of applicant Narendra is also established which is prior to the incident in question, as it is stated that in the second week of July 2010, he was informed by absconding accused Thapa and co-accused Rajendra about some firing which was to be carried out in Mumbai and to arrange for four to five boys and accordingly, he along with applicant Narendra and other absconding co-accused met at Limbada Chowk, where co-accused Rajendra also arrived and informed them that at any cost, work should be done. He further stated that, accordingly, on the next day, he along with applicant Narendra and other co-accused collected three rounds of magazines for shot arm and Rs.800/- each, which were provided by absconding accused Thapa, and from Borivali proceeded to the spot in two auto rickshaws. On reaching the spot, one jeweler shop was pointed out by Thapa informing that firing was to be done there. Accused no.5 Bhandari and Thapa remained in the rickshaw across the road while applicant Narendra and co-accused Harshad entered into the jeweler shop and while they were inquiring with watchman, one person intervened, upon whom Harshad opened firing and all of them ran away from the spot.

24 Similar is the confessional statement of accused no.3 Paresh Nepali. Both these accused as such involved both the applicants. Both said accused though have retracted their confession, on perusing the retraction statements, it is noted that they have admitted that he along with absconding accused as well as co-accused had met in Khar area before absconding accused Thapa contacted applicant Ravi Punjabi on public telephone and has further admitted about he being present along with absconding accused Thapa in an auto rickshaw across the road. It is further admitted that after firing incident at the jewelery shop, they all reached at Borivali and received Rs.18,000/-.

25 Similarly, with reference to incident involving present applicants, he admitted to have met co-accused and absconding accused including applicant Narendra one day prior to the incident on 13th July 2010 at Limbada Chowk and further admitted about their going to Borivali including applicant Narendra and of collecting small shot arms along with Rs.800/- and about applicant Narendra along with him and other co-accused proceeding to the spot, which was a jewelry shop and about applicant Narendra being present when firing was opened.

26 In that view of the matter, confession of accused nos.5 and 3 though are retracted, same can duly be considered if there is ample other evidence on record to corroborate the same. For that purpose, on perusal of evidence of PW17, involvement of applicant Ravi Punjabi is found as a person who used to provide mobile numbers and addresses of builders, jewelers and rich persons from Mumbai to absconding accused Ravi Poojari, who in turn, used to extend threats to such persons to extort money and on their failure to act upon, he used to arrange for firing upon them by engaging these boys for that purpose.

27 Evidence of PW1 Sunil Shetty, accused turned approver, reveals that he was working as a Manager for absconding accused Ravi Poojari on monthly salary of Rs.25,000/- and that Ravi Poojari was indulged in extending threats to builders and jewelers and by extending such threats, extorted money from them and upon their failure to part away with money, opened fire upon such persons. So far as applicant Ravi Punjabi is concerned, it has come in his evidence that said applicant used to provide information of builders, jewelers and other rich persons to Ravi Poojari and has identified applicant before the court. It has also come in his evidence that prior to the incident, absconding accused Ravi Poojari had informed him that applicant Ravi Punjabi was his close associate and as such was member of gang headed by Ravi Poojari. He also deposed about applicant Ravi Punjabi looking after business of Ravi Poojari in Mumbai, which was managed by providing details of rich persons, builders and jewelers to Ravi Poojari, and to collect amounts, and on failure, to open firing on such persons who refused to part away with the amounts. According to his evidence, applicant Ravi Punjabi on collecting amounts on behalf of Ravi Poojari used to keep some amount for himself and used to send remaining amount to the mastermind Ravi Poojari.

28 With reference to incident in question, it is deposed that he was informed by Ravi Poojari to send address of Nautandas Jewelers situated at Andheri, builder's office at Khar and Sagar City builders office at Andheri by email to absconding accused Rajendra Thapa. To a specific question by the court as to what was the purpose for providing name and addresses of such jeweler shop to Rajendra Thapa, it is replied that applicant was in contact with owner of such jeweler shop with intention to settle the amount. However, when no settlement could be arrived at, such owner was called, so that instructions could be issued by SMS to absconding accused Rajendra Thapa to arrange for firing upon him. Infact, PW1 Sunil Shetty has admitted that he knew applicant Ravi Punjabi as a member of gang headed by Ravi Poojari and as his close associate who looked after his business in Mumbai, and on the basis of details provided by applicant Ravi Punjabi, Ravi Poojari used to extend threats and demand money form businessmen, jewelers and rich persons from Mumbai. It has further come in his evidence that applicant Ravi Punjabi being builder was knowing most of the builders in Mumbai and used to meet them to settle the amount after they were extended extortion threats and has specifically denied that he had never talked with applicant Ravi Punjabi on telephone and has further

admitted about applicant Ravi Punjabi, apart from owner of Nautandas Jewelers, was in contact with others who were extended threats by Ravi Poojari. It is specifically admitted that owner of Nautandas Jewelers was threatened. In view of above evidence, though PW1 Sunil Shetty approver has denied that owner of Nautandas Jewelers was not threatened by Ravi Poojari in his presence, this admission by itself is not sufficient to dislodge his evidence as stated above.

29 The evidence of PW18, who is a property broker, reveals that prior to incident, he used to receive telephone calls from Ravi Poojari demanding Rs.1 Crore, for which he expressed willingness to part away with Rs.2 Lakh. However, the amount was further negotiated to Rs.5 Lakh which was handed over by him three days thereafter, near Khar gymkhana, to applicant, who, on receiving said amount assured that thereafter he would not receive any extortion threats, and thereafter, he asked co-accused to meet applicant. It has come in his evidence that during that period, builder community were receiving threats and were targeted for extortion by applicant Ravi Punjabi on the say of Ravi Poojari.

30 Evidence of PW19 establish involvement of applicant and corroborates evidence of PW1 approver. From evidence of PW22 it reveals that he is also in construction business with turnover of about 100 Crore per year and prior to incident was receiving extortion threats from absconding accused Ravi Poojari, for non-payment of money demanded on extending threats to him. His evidence further reveals that on receiving such threats, applicant Ravi Punjabi had contacted him and had inquired with him if he was receiving any calls, when applicant Ravi Punjabi informed him that it is not good for him to be on inimical terms with Ravi Poojari and advised for settlement of issue by making payment of Rs.7 Lakh, to which he agreed due to fear and on the following day, made said payment and since then did not receive any extortion threats. PW22 also identified applicant Ravi Punjabi in the court to be the same person with whom he had meeting.

31 Similarly, evidence of PW23 also establish involvement of applicant who on receiving similar threats was contacted by applicant Ravi Punjabi near Khan gymkhana to whom he paid amount of Rs.5 Lakh and has identified said applicant in the court. It has come in his cross-examination that he has received phone calls from applicant Ravi Punjabi and thereafter within two to three days he made the payment.

It has also come in his cross examination that after he agreed to make the payment to Ravi Poojari, he received phone call from Ravi Punjabi after two to four days and has thereafter within two to three days met applicant Ravi Punjabi near Khar Gymkhana and paid the amount.

Similar is the evidence of PW24, who is also an estate agent and was demanded Rs.50 Lakh on telephone by Ravi Poojari and was threatened to be killed for non-payment of the said amount, which amount was then negotiated to Rs.7 Lakh and was informed by Ravi Poojari that his man will contact him within ten days and accordingly applicant Ravi Punjabi contacted him near Lucky Restaurant at Bandra and collected the amount.

32 Though statement of above said witnesses are recorded after arrest of applicant Ravi Punjabi, their evidence prima facie establish involvement of applicants, and thus, this fact by itself is not sufficient to hold that all such statements are fabricated to nail applicant in the present crime. The evidence of PW37 Mahesh – owner of jewelry shop infact corroborates above evidence on all material aspects, who, with reference to the incident in question has specifically deposed that he knows applicant Ravi Punjabi and has identified him in the court. Further, he has deposed that applicant is also member of

Khar Gymkhana, where he also visits, in his capacity as member of the same, and has deposed that in the first week of July 2010 applicant met him and has inquired if he has received phone calls from Ravi Poojari, to which he replied in affirmative when applicant informed him to not to be on inimical terms with Ravi Poojari and said if PW37 Mahesh would agree, applicant would settle the issue with Ravi Poojari. However, he did not show any interest and informed applicant that he had already lodged report with the police and after this meeting, left abroad. From evidence of PW37 Mahesh, it is material to note that incident in question has taken place on 14^{th} July 2010, while as per his evidence, applicant met him in Khar Gymkhana in the first week of July 2010 and thereafter he left for abroad. Much has been canvassed on the evidence of PW37 as aforesaid, stating that above stated facts are recorded in his supplementary statement. However, from further evidence of PW37, it is revealed that on reading news item in the local newspaper, he did not suspect that applicant must be involved in the incident of firing on dated 14^{th} July 2010, as applicant was a businessman and also a member of Khar Gymkhana. PW37 Mahesh, as such, after incident of firing in his jewelry shop, did not suspect applicant Ravi Punjabi. However, learnt about his involvement through newspaper report after he came to be arrested by police for having connection with Ravi Poojari. Above evidence of PW37, thus, reveals that he had extended reasonable explanation for his not suspecting applicant when he met him in the first week of July 2010 at Khar Gymkhana when he inquired if PW37 was receiving phone calls from Ravi Poojari and had also informed that he should not be on inimical terms with Ravi Poojari, as Ravi Punjabi was also a member of Khar Gymkhana and was also a builder. Above stated explanation put forth by PW37 further finds to be convincing in view of his evidence on record wherein he has stated that he was knowing applicant Ravi Punjabi two to three years prior to the incident and was also acquainted with him as he too was a member of Khar Gymkhana and was builder by profession.

33 In view of evidence of above witness as well as confessional statement of accused nos.5 Bhandari and 3 Paresh Nepali, involvement of both the applicants is prima facie found established.

34 As regards involvement of applicant Narendra is concerned, his involvement is found established from the confessional statement referred above as he was found present with other co-accused and absconding accused at Limbada Chowk, one day prior

to the incident where the conspiracy came to be hatched to open firing in jewelry shop of PW37. Infact, applicant Narendra is found present at the spot. Similarly, from the evidence of PW2 Chhabria, Manager of jewelry shop, and PW3 Manmohan, watchman, incident of firing in the shop on the material date is fully established, when both these witnesses have deposed that after arrival of three persons near the gate, they were inquired by PW3 Manmohan watchman, when PW2 Chhabria Manager arrived and found that the persons were inquiring about PW37 Mahesh, owner of the shop, and one of them suddenly removed shot arm and fired one round on the person of PW2 Chhabria. Both these witnesses have given description of two of the suspects and have identified applicant Narendra in the court.

35 The evidence of PW37 Mahesh also establish fact of his providing CCTV footage to the investigating agency, which fact is further found corroborated with the evidence of Investigating Officer, who has deposed that out of the two compact disks (CDs) seized during the course of investigation, one of the CD was having CCTV footage of attack on PW2 Chhabria, while the other CD contains conversation of threats and has deposed about applicants being seen in the CCTV footage and of their arrest.

36 In the backdrop of above said ample evidence on record against both the applicants, learned counsel for applicants by referring to the case of **Mahipal Singh cited supra** though has contended, that no provisions of M.C.O.C. Act can be made applicable to either of the applicants, as in none of the earlier charge-sheets referred by prosecution, applicants are shown accused, does not hold any substance. Moreover, this aspect is found to be rightly considered by learned Special Judge in paragraphs 156 and 157 of its judgment.

37 In that view of the matter, reference can be usefully made to the decision in the case of **State of Maharashtra vs. Vishwanath Maranna Shetty** where in paragraph 29 of its judgment, it is observed thus :

> "29 While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the Court will be required to

record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising there under, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind."

38 In that view of the matter and on considering the material evidence against both the applicants, they cannot said to have satisfied the twin test as contemplated under sub-section (4) of Section 21 of M.C.O.C. Act, and thus, do not make out a case for grant of bail. Both the applications are therefore liable to be rejected. Hence following order :

ORDER

Applications are rejected.

(P. N. DESHMUKH, J.)