

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1006 OF 2016

Balaji Laxmna Pawar	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. V.B.Shivarkar, for the applicant.
Mr. Vinod Chate, APP, for the State.
Mr. Dilip G. Jagdale, Dy.S.P. Mangalvedha Division, Solapur (Rural
present.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 21st December, 2016.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.
The applicant herein is arrested on 14.9.2012 in Crime No.139 of 2012
registered at Tembhurni Police Station, Solapur for the offences punishable
under Sections 395, 397, 341, 504 read with Section 34 of the Indian Penal
Code and under Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of
Organized Crime Act, 1999 (for short MCOCA).

2. At the outset, the learned Counsel rightly submits that the
applicant has been in custody for more than four years without trial in an

offence which is not punishable with life or death and, therefore, according to the learned Counsel, justice delayed would amount to justice denied. It is true that the applicant is in jail without trial. The Special Court at Pune is trying offences under the said Act in offence registered at Kolhapur, Solapur, Pune, Satara and Sangli. and there is only one Special Court at Pune. Delay in trial ipso facto does not entitle an applicant to be enlarged on bail and especially not when he is being prosecuted under MCOCA. Liberty of an individual cannot outweigh the interest of the society.

3. As far as the facts of the case are concerned, it is the case of the prosecution that Mangesh Mane is working as an operator at Bharat Petrol Pump which is situated on a Highway at Venegaon. Mangesh Mane is entrusted with the job of depositing cash everyday in the Bank. It is the collection of the previous day. He takes his Indigo Car bearing No.MH-45-A-7888 to the Bank. That in the month of August 2012, there was a public holiday and it was closed for 3 days. On 21.8.2012, the complainant had collected a cash of around Rs.73,86,163 and was proceeding to the Bank. He was accompanied by Sayyed Nayeem and Manojj Mane. That Mr. Mangesh Mane was driving the car on Pune Solapur Highway, at about 11.45 a.m., a Tata Indigo Car bearing Regn.No.MH-44-A-909 had followed them. They had stopped the car. Two persons sitting in the car

alighted from the car. They opened fire from front side. They were in all five persons in the car. The four persons in the car opened fire, threatened the complainant. They took the cash and handed over to two persons who had followed on a motor bike. The police had arrived at the spot but by then, the assailants and the people who had taken the rexin bag had fled from the spot. Investigation is set in motion and on 14.9.2012, the applicant was arrested. It had also transpired from the Mobile Tower Data that the applicant had supervised the site on 13.8.2012 and 21.8.2012. In the course of investigation then the applicant was arrested on 21.9.2012. It had transpired that the applicant had committed similar offences in the past nay he was convicted for the offences punishable under Sections 395 and 397 of the Indian Penal Code and had undergone sentence of 7 years imposed upon him. That in the course of investigation, statements of witnesses were recorded. The confessional statement of some of the accused were also recorded. On 1.10.2012, the investigating agency had received the sanction for prosecuting the accused under the provisions of MCOCA.

4. The learned Counsel appearing for the applicant submits that although it is true that in one of the cases, the applicant herein was

convicted, it would be necessary to examine as to whether any specific role is attributed to the applicant in the present case. It is submitted that the recovery under Section 27 of the Indian Evidence Act is foisted upon the applicant and same cannot be relied upon.

5. The learned APP submits that the investigating agency has recorded confessional statements of the co-accused which implicate the present applicant.

6. Perused the confessional statement of one Uttam Bhosale. In the said statement, he has stated that he is an associate of the present applicant as they were in a habit of stealing vehicles. It is stated that the applicant herein was referred to as Seth Rajput also. According to the said confessional statements, it appears that the co-accused had introduced Uttam Bhosale to the applicant and Dhoopkaran Choudhari. According to Uttam Bhosale, he had not received his share in the said offence. That subsequently, when he insisted upon his share to the present applicant given him, the present applicant gave him a silver coloured Maruti Zen bearing No.MH-11-UE-207 and that the said car was used in other offence.

7. The learned Counsel submits that in the present case, the said

car is not used. The confessional statement of the co-accused is recorded in a manner which would indicate that the co-accused is a witness and not merely a co-accused and, therefore, according to the learned Senior Counsel, the said statement cannot be used under Section 30 of the Evidence Act or under the provisions of MCOC A. The learned senior Counsel submits that although it is an admitted position that there are criminal antecedents, the same cannot be relied upon to deny the present applicant as the role of the applicant in the present case is not spelt out. It is pertinent to note that the co-accused had referred to him as leader of the organization. The learned APP has also placed reliance upon the statement of one Kumar Shubham who hails from District Shaikhpura, Bihar. According to him, he had met the present applicant in Bihar when he had been to meet his friend Pankajsingh. He has also stated about the incident where the applicant had cheated him. According to him, the applicant had taken him to District Basti to his own village.

8. The learned counsel submits that the statement of Shubham would also indicate that he is a victim and not a co-accused and therefore, his confessional statement cannot be relied upon. It is also an admitted position that Shubham has been enlarged on bail by the Special Court.

Taking into consideration the material in the investigation and the criminal antecedents of the applicant, it cannot be said for a moment that the applicant is not involved in the present case. Moreover, the fact that he is the head of the crime syndicate, he does not deserve to be enlarged on bail. It would not be appropriate for this Court to consider the delay in trial and enlarge the applicant on bail as the liberty of an individual, that too, a habitual offender who has been prosecuted under the provisions of MCOCA, cannot outweigh the interest of the society at large. The act would fail to have a deterrent effect.

9. It is the case of the prosecution that there are 9 criminal cases registered against the present applicant. As far as the present case is concerned, it has transpired in the course of investigation that the present applicant had done the reiki of the spot from where the amount was taken to the Bank from the petrol pump by which the complainant used to travel to go to Bank. The applicant appears to be a master-mind in the present case. It has also transpired that he had introduced some of the co-accused to Anil @ Dheepkaran Choudhari. It is a matter on record that he happens to be a member of the crime syndicate headed by Dhoopkaran Choudhari.

10. Taking into consideration the fact that the applicant has criminal antecedents, that he hails from the State of Bihar and has

committed offences at various places in the State of Maharashtra, the applicant does not deserve to be released on bail

11. In the case of the State of **Maharashtra vs. Vishwanath Maranna Shetty (Criminal Appeal No.1689 of 2012)**, the Hon'ble Apex Court held as follows :-

“21) 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 thereunder.”

12. in view of the Judgment of the Hon'ble Apex Court in the case of

State of Maharashtra vs. Vishwanath Maranna Shetty (cited supra), it will be difficult for this Court to record a finding that on being enlarged on bail the applicant does not indulge into similar offence. Justice must not only be done but it must appear to have been done. It is in these circumstances that the applicant would not deserve to be enlarged on bail. Hence, the application being sans merits, stands rejected.

13. The trial is expedited. The learned Special Court is requested to make an endeavour to see that the recording of substantive evidence of the witnesses in the present case is concluded, as far as possible, within one year from the date of this order.

(SMT. SADHANA S.JADHAV, J.)