

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1918 OF 2014

Jakir Siraj Irani	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Pankaj D. Purway i/b. Mr. Ravindra S. Jadhav, Advocate for the applicant.
Mrs. R. Ambekar, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **16th March, 2016.**

P.C.:

This Application is moved by the applicant/accused for bail. The applicant/accused is prosecuted for the offences punishable under sections 392, 411, 414, 34 of the Indian Penal Code and under sections 3(1)(ii), 3(2), 3(4), 3(5) of MCOC Act, 1999 in C.R. No. I-84 of 2012 with Wagle Estate Police Station, Thane. The offence is registered at the instance of complainant Nandini Nilesh Pawar on 29th April, 2012. When the complainant was walking on the road along with her sister, two accused Sikander Mumtaz Kasamali Jafari and Mohammed Feroz Hussain Sayyed snatched her mangalsutra worth Rs.75,000/- and so the offence was registered. The police arrested Sikander Mumtaz Kasamali Jafri. During the course of investigation, the police found that Sikander is a leader of the organized crime syndicate. The applicant/accused and other co-accused are the members of said syndicate. These members snatch the chains or

mangalsutras which are on the person of women while going on the motorcycle. They used to sell those chains to jewellers. During the period of two years from 2012, this gang have committed 91 offences and gold ornaments of 2870 gms. which approximately valued Rs.64,52,500/- were recovered from the co-accused.

2. It is the case of the prosecution that the name of applicant/accused was also transpired during interrogation. It is the case of the prosecution, the applicant/accused is involved in 32 cases, out of which in 6 to 8 cases he is acquitted and 20 to 25 cases are under section 392 of Indian Penal Code of similar nature. He is a member of organized crime syndicate. The applicant is arrested on 28th June, 2013. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused seeks parity on the basis of order dated 30th July, 2014 passed by this Court in Criminal Bail Application No. 1175 of 2014 of Taufi Tejib Hussain. The learned counsel submitted that the case of this applicant/accused is identical to the case of Taufik Tejib Hussain. The applicant/accused was not involved in the actual chain snatching in C.R. No. I-84 of 2012 registered on 29th April, 2012.

4. Learned APP opposed the Bail Application. She submitted that the said order of this Court is challenged by the State before the Supreme

Court. She submitted that the applicant/accused is having a very bad criminal record, as he is involved in number of similar type of cases. She relied on the affidavit filed by Monika N. Raut, Assistant Commissioner of Police, Vartaknagar Police Station, Thane dated 17th January, 2015. Learned APP further submitted that list of the cases which are pending against this applicant/accused is annexed to this affidavit. She further submitted that in the confessional statement of co-accused Sikander Jafari and Taufik Hussain they have mentioned that applicant/accused is a member of the organized crime syndicate. The confessional statement under section 18 of MCOC Act of the applicant is also recorded on 9th July, 2013 before the competent authority wherein he has admitted that he is the member of the gang. It is submitted that the applicant/accused is likely to commit similar type of offence in future if released on bail and, therefore, considering the bar under section 21(4) of MCOC Act, the applicant is not to be released on bail.

5. Perused the FIR, relevant documents produced herein, affidavit filed by Monika Raut, Assistant Commissioner of Police and the order passed by my predecessor dated 30th July, 2014 while releasing co-accused Taufik Tejib Hussain on bail. It is true that the case of Taufik Tejib Hussain and present applicant/accused is identical. The present offence is registered out of the incident of chain snatching in which Nandini Pawar is the

complainant. It is the case of the prosecution that applicant/accused himself was not a snatcher of mangalsutra of Nandini Pawar. The case of the prosecution that the applicant/accused is using similar modus operandi of snatching chain and mangalsutra of women and he is having association with the gang of Sikander Jafari and a member of organized crime syndicate cannot be doubted and is to be accepted at this stage. Total 32 cases are registered against the applicant/accused, out of which in 6 to 8 cases he has been acquitted, however, nearly 20 to 25 cases are still pending against him wherein he has committed similar type of offence of robbery punishable under section 392 of the Indian Penal Code wherein the punishment is upto 10 years. In the case registered under section 392, different roles can be played by the accused, i.e., accused may be actually involved in the commission of said offence, i.e., either he himself is a chain snatcher or he has sold that ornament to jeweller or some other person or he was involved in the preparation of plan of the commission of the offence. In that event, the applicant is not a person to whom the bail can be granted by the Court. The applicant is having criminal antecedents. Considering his record, it cannot be said that the applicant will not commit any offence in future. However, I rely on the view taken by me in the case of **Mangesh Manik Kanchan & Ors. vs. State of Maharashtra in Bail Application No. 1696 and 1930 of 2014 decided on 13th July, 2015**. In

the said case, the ratio laid down in the case of **State of Maharashtra vs. Vishwanath Maranna Shetty, reported in (2013) Cri. L.J. 2015** is discussed and I have taken a view that though under section 21(4B) of MCOC Act, the Court has to satisfy itself that he is not guilty in such offence and that he is not likely to commit any offence while on bail, I have taken a view that *“There should be actual commission of offence by him in the present. A past of a criminal cannot be linked always with his future when he has not committed any offence in the present”*. A person can be a member of a gang and may be charged for the same under section 3(4) of the MCOC Act if he has actually committed that offence in that C.R. For each and every offence committed by other members of the gang, all the members cannot be charged. I am afraid it will amount to apply doctrine of vicarious liability which is unknown to criminal jurisprudence in India.

6. It is not brought to my notice that whether the judgment in the case of **Mangesh Manik Kanchan** is challenged before the Supreme Court and any other view is taken by the Supreme Court or not. Under such circumstances, when the applicant/accused has not committed actual offence of chain snatching in C.R. No. I-84 of 2012 which is registered at the instance of Nandini Pawar, I hold a view that he, being simplicitor a member of organized Crime Syndicate, itself is not sufficient. For that purpose also I rely on the judgment of **Mangesh Manik Kanchan** (supra)

wherein the law in respect of Section 3(4) of MCOC Act is discussed at length. Further, as pointed out by the learned counsel for the applicant, I also rely on the order dated 30th July, 2014 passed by the Court in Criminal Bail Application No. 1175 of 2014 of Taufik Tejib Hussain. Hence, bail is granted to the applicant/accused on the following terms and conditions:

ORDER

- (i) The applicant/accused be enlarged on bail on furnishing PR. Bond in a sum of Rs.50,000/- with two local sureties in the like amount.
- (ii) The applicant shall not tamper with the evidence.
- (iii) The applicant shall not harass, threaten or pressurize the complainant.
- (iv) The applicant shall not indulge into any of the offence against the property mentioned in the Indian Penal Code.
- (v) The applicant shall make himself available and attend all Court dates;
- (vi) The applicant shall not abscond and furnish his address to the police along with address proof.
- (vii) The applicant shall not leave India without the prior permission of the Court.
- (viii) In the event of breach of any of the above conditions, the

prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)