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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2700 OF 2014

Mausamali Shah Irani @ Mausam Jafar Khan	..Applicant.
Vs.	
The State of Maharashtra	..Respondent

Mr. Pankaj D. Kavale for Applicant.
Ms. Rutuja Ambekar, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 5th February 2016.

P.C.

1 The applicant is seeking bail in CR No.I-84 of 2012 dated 29.4.2012 registered with Wagle Estate Police Station, Thane under Sections 392, 411, 414. 34 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC Act”).

2 The said crime is registered on the basis of the report lodged by the first informant Smt. Nandini Pawar. The contents of the FIR discloses that two Mangalsutras (ornament worn by the married women) which were on the person of the complainant were snatched by two

unknown persons who were on the motor-cycle. During the course of investigation, it was revealed to the Police that the said act is committed by the members of an Organised Crime Syndicate headed by Sikandar Jafari. It was further revealed by the Police that the said Sikandar Jafari and his organised crime syndicate is involved in several offences of similar nature. The chain snatching from the person of women was the specialisation of the said organised crime syndicate.

3 The Senior Police Inspector, Crime Branch, Wagle Estate Division, Thane thereafter submitted proposal for invoking the provisions of MCOC Act to the said CR No.I-84 of 2012 registered with Wagle Estate Police Station, Thane. The competent authority under the MCOC Act thereafter granted prior approval as contemplated under Section 23(1)(a) of the MCOC Act by its order dated 16.10.2012. During the course of investigation, the confessional statement as contemplated under Section 18 of MCOC Act of accused persons namely Sikandar Jafari, Taufik Hussain and Musa Sayyed came to be recorded by the competent Authority. After completion of investigation, the Commissioner of Police, Thane City accorded sanction as contemplated under Section 23(2) of MCOC Act by its order dated 8.11.2013. The Investigating Officer thereafter submitted chargesheet before the Special Court which has now culminated into

Special Case No.13 of 2013. The applicant was arrested on 5.10.2013 in the present crime.

4 The learned Counsel for the applicant submitted that the co-accused, Taufik Hussain, who has given confessional statement dated 6.12.2012 under Section 18 of the MCOC Act has been released on bail by this Court by its order dated 30th July 2014. He submitted that except the fact that three co-accused persons have mentioned the name of the applicant in their statements under Section 18, there is no other evidence against the applicant and no role is attributed to him in the present crime and/or for and on behalf of the said organised crime syndicate. He further submitted that no overact is attributed to the applicant even in those three statements except stating his name as a member. He submitted that the applicant stands on a better footing than the co-accused Taufik Hussain and in view of the fact that the said Taufik Hussain has been released on bail by this Court, principle of parity squarely applies to him also. He therefore prayed that the applicant may be released on bail.

5 The learned APP has filed a detailed affidavit dated 23.2.2015 of Shri Vijay Kadam, Assistant Commissioner of Police, Special Branch, Thane. The learned APP vehemently opposed the present application. She submitted that as far as order dated 30.7.2014 passed by this Court in the

case of Taufik Hussain is concerned, the same is under challenge before the Hon'ble Supreme Court. However, she fairly conceded that till date the Supreme Court has not stayed the said order and the said order is in force as of today. She further submitted that the applicant has been acquitted in one crime and in another crime which is of similar nature, he is on bail.

6 The record discloses that the applicant has been named as a member of the organised crime syndicate headed by Sikandar Jafari and the said syndicate is indulging into the activities of snatching of gold chain ornaments from the person of the women. It is not the prosecution case that, the applicant is involved in the present crime and or has taken active role in the present crime.

7 The prosecution has relied on the confessional statements of the aforesaid three accused persons for showing the membership of the present applicant in the said organised crime syndicate. In the case of co-accused Taufik Hussain, this Court after taking into consideration various aspects of the present case, was pleased to release Taufik Hussain on bail. The said co-accused Taufik Hussain has given confessional statement dated 6.12.2012 as stated hereinabove thereby implicating the present applicant as the member of the organised crime syndicate. This Court while releasing the said Taufik Hussain on bail by its order dated 30.7.2014 has observed

that, when in the substantive offence, no role of the applicant is shown and when he is being a member of the organised crime syndicate headed by Sikandar Jafari, is sought to be supported only on the basis of the applicant's own confession, it would be proper to release the applicant on bail. It prima facie appears to me that the aforesaid observation is also applicable to the present applicant.

8 The learned APP has pointed out the involvement of the applicant in another crime as stated above and has placed reliance on the confessional statements of the aforesaid three accused persons for proving membership of the present applicant with the said syndicate. Prima facie, I am of the opinion that the applicant is not guilty of an offence under the provisions of MCOC Act. The applicant is in custody for last more than three and half years.

9 In the circumstances, I am of the opinion that the applicant has made out a case for his release on bail. Hence, the following order:-

(i) The applicant be released on bail in CR No.I-84 of 2012 registered with Wagle Estate Police Station, Thane on his furnishing PR bond of Rs.30,000/- with one or two solvent local sureties in the like amount.

(ii) After his release from jail, the applicant shall attend the office of the Assistant Commissioner of Police, Wartak Nagar Division, Thane on 1st and 3rd Monday of the every month between 11.00 a.m. to 2.00 p.m. till the conclusion of the trial.

(iii) The applicant shall not tamper with evidence and/or influence the prosecution witnesses.

10 The application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)