

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1465 OF 2015

Shri Kalpesh Umaji Bhitre	... Applicant
Vs.	
The State of Maharashtra	... Respondent

with

BAIL APPLICATION NO.1554 OF 2015

Shri Javed Jafar Sayyad	... Applicant
Vs.	
The State of Maharashtra	... Respondent

with

BAIL APPLICATION NO.2484 OF 2015

Shri Zakik @ Kadir Abdul Hafiz Ansari	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.Rajendra Sorankar, for the Applicant in BA/1465/2015
Mr.Aniket Vagal for Applicant in BA Nos.1554/2015 and 2484/2015
Mrs.Geeta Mulekar, APP, for Respondent – State

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: MAY 9, 2016

P.C.:

1. All these bail application are decided together by a common order as all the applicants/accused are facing prosecution for commission of one and the same offence punishable under sections 143, 144, 145, 147, 149, 450, 427, 307, 120B, 506(2) and 34 of the Indian Penal Code and under section 3, 25 of the Indian Arms Act and also under section 37(1) and 135 of the Maharashtra Police Act in C.R. No.175 of 2014 registered with

Santacruz police station. The incident has taken place on 1.3.2014 at around 1545 hours. The applicants/accused alongwith the co-accused are the members of a syndicate of one Zulfikar Yasin Behlim. The offence is registered at the instance of one Adit Hidayat Shaikh, who is in the employment of Mehta Developers and HDIL company as a site supervisor. On 1.3.2014 at around 3.45pm, he heard somebody breaking the glass of the front door of the office of the company. So he came out. At that time, he noticed 10 to 15 persons who were armed with iron bars, sickle, entered forcibly in the office. They had covered their faces with handkerchief and they were wearing caps. The handkerchief on the face of one person slipped and therefore, he identified him as one Ajmal and so also he could identify other persons as the associate of one Zulfikar, who is a leader of the gang. These persons threatened him and the security guard and asked why money was not given to Zulfikar. However, at that time, one of the security guards fired in area and so they all ran away. It is the case of the prosecution that the co-accused and the applicants, who are the members of the gang of Zulfikar have created terror in the vicinity and they used to demand money in the name of Zulfikar from businessmen and Developers and, therefore, offence was registered.

2. It is the case of the prosecution that subsequently by order dated 31.5.2014, the Commissioner of Police, Brihanmumbai, in exercise of his powers under section 23(2) of the Maharashtra Control of Organised

Crime Act, 1999. The investigation is completed and chargesheet is filed and case is registered as MCOC Special Case No.4 of 2014. The applicants-accused Zakik was arrested on 3.8.2014, Javed was arrested on 4.3.2014 and Kalpesh was arrested on 9.3.2014.

3. Mr.Vagal, the learned Counsel appearing for the applicants-accused in bail application Nos.2484 of 2015 and 1554 of 2015, has submitted that the applicants/accused are innocent. Their names are not mentioned in the FIR. They were not present at the time of the incident. There is no recovery of any weapon from them and they are in the prison since last 2 years approximately. Mr.Sorankar, learned Counsel for applicant-accused in bail application No.1465 of 2015 submitted that the applicant-accused was not identified at the time of test identification parade. The learned counsel submitted that chargesheet is filed in this case. They are born and brought up in Mumbai and they have roots in Mumbai and they will not jump bail, if they are released on bail. It is further submitted that though the applicants..a re prosecuted under MCOC Act, the applicants/accused are not the members of the gang of Zulfikar and as per the requirement of the Act, one or more chargesheets qua unlawful activities of the organised crime syndicate should have been filed and there should be some evidence to show that earlier, the applicants/accused have singly or jointly undertaken unlawful activities and in respect of which more than one chargesheets have been filed. It is submitted that Applicant/accused

Javed has no criminal antecedents and as regards the other two applicants/accused Kalpesh and Zakik, though there are antecedents, these offences were committed by these persons independently and not alongwith the members of the gang of Zulfikar.

4. In support of their submissions, the learned Counsel relied on the judgment in the case of **Govind Sakharam Ubhe vs. The State of Maharashtra**¹ where the Division Bench of this Court held that “it is the membership of organized crime syndicate which makes a person liable under the MCOCA.” “What is import is the nexus or the link of the person with organized crime syndicate.”

5. Mrs.Mulekar, learned Prosecutor appearing for the State, has opposed this application. She relied on the statements of the witnesses and she further submitted that this Court by order dated 28.7.2015 has rejected the bail of one Rohan Gaikar who has played a similar role. She relied on a chart of the evidence of the witnesses against each of the accused. She submitted that the police have collected Call Data records of all the cellphones of these accused persons which disclose that the accused were present at the time their presence is located near the spot of offence. Similarly, they have connections that the phone calls are recorded with the other members of the gang of Zulfikar. She also relied

1 2009 ALL MR (Cri.) 1903

on the confessional statement of Zakik Qadir, where he has taken the names of the other two applicants/accused.

6. In the present case, the applicants/accused are charged under the relevant section of MCOC Act. At the time of hearing of the bail, once the sections under MCOCA are invoked, then, this Court has to take into account the section 21 of the MCOC Act. The section restricts regular powers of bail which are otherwise available under section 436 of the Code of Criminal Procedure. However, it is necessary for the Court to consider the exact role played by the applicants/accused and his prima facie nexus with the syndicate and if after examining his association with the syndicate, if the Court finds that there is some objective satisfaction that the accused would not repeat the offence and prima facie feels that there is a weak case against the accused under the MCOC and he would not repeat the offence then, the Court may allow the bail application. In the present case, the two applicants/accused Kalpesh and Zakik have 3 – 4 criminal cases pending in their names. Applicant-accused Javed does not have any criminal record. Though the names of the applicants are not mentioned in the FIR, from the statements of the other witnesses, it is found that the applicants/accused used to go with one Feroze Bantai, who is the right hand of Zulfikar, to bars or hotels. It appears from the record made available by the prosecution that these persons have not committed any offence earlier for Zulfikar or as a member of his gang. This is the first

time that they were called to work for the gang of Zulfikar and to join them. These persons are jobless, they were given weapons just before going to the spot. At this stage, from the material produced before the Court, their presence at the time of the incident cannot be doubted as the confessional statement of Zakik recorded by the police discloses that he and other applicant/accused Kalpesh joined the group, who went with Feroze to demand money. Thus, it appears from the overall record that these persons were friendly with Firoz Bantai, associate of Zulfikar. However, only because of their presence, they cannot be identified as a member having previous nexus with the other members of the gang. It appears from the record that these persons were present and this was the first offence committed by them as associates of Zulfikar, as they were called to join. In the attack, nobody was assaulted and no property was stolen.

7. Considering these facts, I am inclined to grant bail to all the accused. It appears from the statements of the other witnesses that they are not like the other members of the gang like Feroze Bantai, Sufiyan Ajmal, Asif Sayeed Khan, etc. who have been working for Zulfikar. Though one or two witnesses like the hotel or pub owner have stated that they knew the applicants/accused and they used to go to the pub without entry fee and said that they used to be with Feroz Bantai. At the most, it could be stated that they were in the gang of Feroz Bantai. However, against the gang of Feroz Bantai, two separate chargesheets are not filed

and in the present case, MCOC Act is made applicable to the members of 'Zulfikar' gang and not against the Feroz Bantai gang. Therefore, I grant bail to the applicants/accused on the following terms:

- i) The applicant-accused Shri Zakik @ Kadir Abdul Hafiz Ansari shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount. The applicants/accused Shri Kalpesh Umaji Bhitre and Shri Javed Jafar Sayyad shall be released bail upon furnishing P.R. Bond in the sum of Rs.100,000/- each, with one or two solvent sureties in the like amount;
- ii) The applicants-accused shall not tamper with the evidence or pressurise the complainant;
- iii) The applicant-accused shall not indulge into any criminal activity and especially with the members or associates of any gang including Feroz Bantai or Zulfikar. Further, they shall attend on all the Court dates;
- iv) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of his address;

v) 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.

8. Bail applications are disposed of accordingly.

(MRIDULA BHATKAR, J.)