

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6793 OF 2016

Anwar @ Nuwa Latif Pinjari @ Qurshi ..Applicant

Versus

The State of Maharashtra,
through City Police Station,
Shrirampur, Taluka Shrirampur,
District Ahmednagar ..Respondent

Mr Majid S. Shaikh, Advocate for applicant
Mr S.N. Morampalle, A.P.P. for respondent

- WITH -

CRIMINAL APPLICATION NO.141 OF 2017

Ravya @ Ravindra s/o Antavan
Pagare @ Bhalerao ..Applicant

Versus

The State of Maharashtra ..Respondent

Mr Shaikh Mazhar A. Jahagirdar, Advocate for applicant
Mr S.N. Morampalle, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th February 2017

PER COURT

Heard.

2. In C.R. No.39/2015, registered at Shrirampur City Police Station, District Ahmednagar, for the offences punishable under Sections 395, 341, 427 of the Indian Penal Code and Sections 3 (1) (ii), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'M.C.O.C. Act' for brevity), the applicants are seeking regular bail, who were arrested on 16th February 2015 and 17th February, respectively.

3. So far as applicant Anwar is concerned, while invoking provisions of M.C.O.C. Act against him, in all three crimes including present one is taken into account and the other two offences being C.R. Nos.275/2011 and 225/12. Learned Counsel for the applicant - Anwar has invited attention of this Court to the judgment of the learned Judicial Magistrate, First Class (Court No.1), Shrirampur in R.T.C. No.12/2013 and 286/2012, so as to submit that in both these crimes, the applicant - Anwar is acquitted. According to him, though these two offences were taken into account at the relevant time for invoking provisions of M.C.O.C. Act, now in view of subsequent changes that of acquittal, his application needs to be allowed.

4. Mr Jahagirdar, learned Counsel for the applicant - Ravindra would urge that the applicant is entitled to be released on bail in view of the fact that there is only one crime registered against him and he is not involved in the offence so as to infer the continuing unlawful activity. He would then urge that even if there is recovery from the applicant - Ravindra, the offences in question being simplicitor punishable under Sections 395, 457, 451 were taken into account for the purpose of invoking the provisions of M.C.O.C. Act against him at the stage of investigation. He would then urge that already the applicant is behind the bars for more than two years.

5. A categorical statement is made by learned Counsel Mr Jahagirdar that the confessional statements recorded under Section 18 of the M.C.O.C. Act though were forwarded to the learned Chief Judicial Magistrate, however, the present applicants at no point of time were produced before the learned Magistrate for the purpose of

confirmation of the confessional statements. As such, said statements lose its sanctity and the same would not point the present applicants in the eyes of law.

6. Learned Addl. Public Prosecutor opposed the application on the ground that what is contemplated in the statute is, there has to be more than one offence in last ten years against the syndicate or member of the syndicate. According to him, apart from recovery from accused Ravindra in Crime No.I-39/2015, the other accused Anwar was apprehended from the spot. He would also rely on confessional statements recorded under Section 18 of the M.C.O.C. Act. According to him, the bail applications need to be rejected.

7. What could be gathered from the record is, the accused – applicant Anwar alias Nuwa Latif Pinjari alias Qureshi is arrested in the crime in question with a background of two more offences i.e. total three offences and out of these three, he is already acquitted of in two offences. So far as said accused is concerned, there is only one crime pending against him i.e. C.R. No.39/2015, so is the case against other co-accused Ravindra, the applicant in Criminal Application No. 141/2017.

8. As such, in the aforesaid background, though the submission that there is no continuing unlawful activity at the behest of applicants, appears to be appealing, however, such contention is required to be rejected in the background of scheme of the M.C.O.C. Act that there has to be more than one offence in last ten years against the syndicate or member of the syndicate, however, the subsequent developments are required to be taken into account, i.e.

acquittal of accused Anwar in C.R. Nos.275/2011 and 225/2012, which fact is not in dispute.

9. One more aspect of which this Court must take note of is, these accused persons are behind bars for more than two years. Though confessional statements under Section 18 of the M.C.O.C. Act gone against co-accused, however, those statements are required to be considered in the backdrop of pendency of other two crimes against applicant Anwar, in which he is acquitted. Furthermore, categorical statement is made by the learned Counsel for the applicant that applicant was not produced before the learned Chief Judicial Magistrate along with confessional statement recorded under Section 18 of the M.C.O.C. Act.

10. In the above backdrop, in my opinion, it will be appropriate to direct release of the present applicants on following terms :

(a) The applicants shall be released upon each of them executing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.

(b) The applicants shall not influence the prosecution witnesses and shall not tamper with the prosecution evidence.

(c) Two consecutive absence of the applicants in the offences under the provisions of M.C.O.C. Act in which they were ordered to be released on bail, if noticed by the learned Special Court, the Special Court will be at liberty to take out proceedings against the applicants for cancellation of bail, as this Court has passed release order only upon assurance and undertaking given by learned Counsel for the

applicants on behalf of the accused persons that they shall co-operate the Special Court in expeditious disposal of the trial.

(d) If it is noticed that the applicants are engaged in any other crime after their release, the prosecution will be at liberty to move the Special Court for cancellation of their bail. Such act on the part of the applicants will be flouting the condition imposed upon them for releasing on bail.

11. Both the Criminal Applications are allowed accordingly.

(N.W. SAMBRE, J.)

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