IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.143 OF 2017

Sharad Chandraprakash Agarwal,
Age 36 years, presently lodged at
Mumbai Central Prison, Mumbai. Applicant
versus
The State of Maharashtra Respondent
(through DCB, CID, AE-Cell)

Mr.A.P.Mundargi, Senior Advocate, with Mr.M.S.Mohite, Mr.Hrishikesh Mundargi and Ms.Shradha Sawant for Applicant.
Mr.Deepak Thakare, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.
DATE : 6th July 2017

PC :

1. The Applicant is seeking bail in connection with the CR No.216 of 2015 registered with RCF Police Station, Mumbai on 15th October 2015. The investigation was thereafter transferred to DCB, CID and the FIR was registered vide CR No.99 of 2015. The offence was initially registered u/s 387 read with Section 34 of Indian Penal Code (`IPC'). The Applicant was impleaded as accused no.9. The offences were invoked subsequently under Sections 387 read with Section 34, 115 read with Sections 302, 120B of IPC, Sections 3, 7 and 25 of the Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crimes Act, 1999 (`MCOC Act')

2. The case of the prosecution is as follows :

(a) The complainant received a call from an international number having a prefix +3444 and the caller said that he is Suresh

Pujari calling from Malaysia. The call was received on 14th September 2015. The caller demanded an amount of Rs.10 crores and gave two days time to the complainant to part with the said amount. Upon inquiry from the complainant as to why the caller demanding money, it was replied that the complainant should pay the amount if he wants to stay alive. On the same day at about 4.37 p.m. the complainant again received the international call from the number having prefix of +3444 from Suresh Pujari who threatened him about going to the police and again reminded that he has two days time to give the money. It is further alleged that on 16th September 2015, at about 4.07 p.m, the complainant again received a call from the international number having the same prefix. The caller identified himself as Suresh Pujari and asked the complainant as to what he has thought about the parting of the amount. The caller threatened that instead of calling the complainant, the caller ought to have visited the office of the complainant and should have shot 2 to 4 rounds of bullets which could have injured few people and in that situation the complainant would have understood the need for parting the amount;

(b) It is further alleged that when the complainant inquired about the caller, he came to know that Suresh Pujari is a gangster operating from abroad whose business is to call people to extort money. It is also found that if the money demanded is not paid, then he kills the said persons and recently he had killed a businessman from Ulhas Nagar in his own office in broad day light. It is further alleged that on 18th September 2015, the complainant gave a written complaint about the alleged demand of extortion money of Rs.10 crores to ACP (Mumbai), Crimes and Senior P.I. RCF Police

Station, Mumbai. It is further alleged that the complainant got instructions from extortion cell of the Crime Department that he should record the calls made for extortion;

(c) On 21st September 2015, at about 9.40 p.m, the complainant again received a call from Suresh Pujari from the international number having the aforesaid prefix and the complainant was informed that he should make a payment of Rs.1 crore as good luck to which the complainant replied that he can give only Rs.5 lakh as good luck and that too at regular intervals. Thereafter the caller disconnected the call and the said call was recorded by the complainant. It is further alleged that after 21st September 2015, the complainant received several calls from international number but he did not receive the same fearing that the same calls must have been made by Suresh Pujari;

(d) On 14th October 2015, at about 8.31 p.m, the complainant received an SMS from mobile number which abused him and threatened him for not answering the calls and for keeping a body guard. He again received an SMS at 9.14 p.m. wherein threats were issued to him of killing his family if money is not given within two days;

(e) On the basis of aforesaid complaint, which was lodged on 15th October 2015 with RCF Police Station, the FIR was registered vide CR No.261 of 2015 under Section 387 r/w 34 of IPC. After registration of the said FIR, the same was transferred to DCB, CID and it was re-registered vide CR No.99 of 2015.

3. During the course of investigation on secret information, accused no.1 Prakash Bichhal and accused no.2 Mubasshir Mujib Sayyed came to be arrested. During their personal search, police seized one 9 mm. pistol, 2 magazines and 7 live cartridges. Police also seized one mobile hand set from which the SMS of threatening was sent to the complainant. During the course of investigation, accused no.3 Gautam Mehta, accused no.4 Chotelal Jaiswar, accused no.5 Krishna Khandagale, accused no.6 Santosh Gaikwad, accused no.7 Naresh Shetty and accused no.8 Ravi Gaikwad were called for inquiry and on finding that they are involved in the crime, they were arrested on 17th October 2015. The Applicant was arrested on 5th December 2015. On completing the investigation, the charge sheet was filed.

4. The Applicant preferred an application for bail before the Special Court for MCOC which was numbered as Bail Application No.7 of 2015. The said application was rejected on 29th April 2016. The Applicant thereafter preferred an application before this Court vide Criminal Bail Application No.1188 of 2016. During the pendency of the said application, the Applicant was furnished with the copies of confessional statements. In view of the same, the Applicant had withdrawn the said application on 22nd September 2016. Thereafter the Applicant preferred another application before the Special Court for MCOC. The said application was rejected by order dated 3rd December 2016. In pursuant to that, the present application has been preferred before this Court.

5. Learned counsel Mr.Mundargi representing the Applicant submitted that there is no evidence to connect the Applicant with the crime. The police have failed to prima facie establish that the Applicant is a member of an organised crime syndicate and is

involved in continuing unlawful activities. The Applicant is engaged in the business of tours and travels and is mainly dealing in domestic and international airline ticketing in the name and style Kudos International Tours and Travels Pvt.Ltd. The office of the Applicant is situated at Andheri, Mumbai. The Applicant is one of the director of the said company. It is further submitted that the prospective flyers to domestic and international destinations approach the Applicant in his office for the purpose of carrying out their bookings of flight tickets. The said tickets are done by the firm of the Applicant after obtaining the required documents. In case of international ticket booking, the Applicant requires photocopies of passport of the prospective flyer in order to ascertain the passport number to be furnished in the ticket. The Applicant's company is also carrying out the business of arranging Vissa for prospective flyers. The payments towards ticketing and vissa is either accepted in cash or by cheque as per the convenience of the flyers by raising appropriate invoices.

6. It is submitted that during the course of the business, the Applicant was approached by Mrs.Indira Pujari, Anjali Pujari and Pranjali Pujari for the purpose of booking their tickets from Mumbai to Hongkong and return. At that time the Applicant was informed by Pravin Pujari that they are frequent flyers and they would deposit an amount with the Applicant's company and the payment may be deducted from the same as and when required. Thereafter the Applicant had booked the tickets for the said persons namely Pravin Pujari and his family members time and again upon their request. Mr.Pravin Pujari also requested the Applicant's company to obtain vissa for his family members. The cost of the same was also

deducted from the amount deposited by them. At some instances Mr.Pravin Pujari also requested the Applicant's company to hand over some excess deposit when the company was having, and at times also requested them to transfer the amounts to the bank accounts that were informed by him to the Applicant. The Applicant without any suspicion and in good faith transferred these amounts and was totally unaware of the nature of transactions underlying between these transfers. It is submitted that the receipt of Rs.9 lakh on 30th May 2015 was towards an on account and advance payment towards arranging travel ticketing and vissa formalities for patrons of the Applicant's business and the same has been entered in the books of accounts. The same cannot be considered to be the alleged amount which was transferred from the extortion amount to various persons. There is no evidence to prove that the amount of Rs.9 lakh received by the Applicant was extortion money obtained illegally by the co-accused by way of extortion. Even on perusal of confessional statements, it is clear that the Applicant has never been a member of Pujari gang which is involved in illegal activities of extortion and threatening. The accused whose confessional statements are recorded, have not mentioned that the Applicant was a member or was involved in any manner in the illegal acts committed by the members of Pujari gang. It is further submitted that the visit of the Applicant to China was solely for business purpose. This is evident from the statement of Sunil Gupta which is part of the charge sheet, wherein he has stated that he visited China along with the Applicant purely for business reasons. The business was in relation to construction and LED lighting. The Applicant has nothing to do with the alleged receipt of Rs.64 lakhs. It is submitted that the travel facility made for the relatives of Prasad Pujari was purely business transactions. The Applicant is in no way connected for the crime for which the FIR has been registered. He has never been in contact with the other accused persons for any other purpose. The accused nos.2 and 6 have not referred to the name of Applicant in their confessional statements.

7. The learned counsel for the Applicant submitted that the FIR was lodged against Suresh Pujari. The prosecution has not established any connection between the Applicant and Suresh Pujari or that between Suresh Pujari and Prasad Pujari. It is therefore submitted that the Applicant has no connection of whatsoever nature with the FIR which was lodged by the complainant. In the FIR it is alleged that the complainant was threatened by Suresh Pujari for extortion. However, the allegations which are made against the Applicant are in no way connected with the acts committed by Suresh Pujari. In the absence of any link between Applicant and Suresh Pujari and/or with Prasad Pujari, it cannot be said that the Applicant is the member of crime syndicate to invoke the provisions of the MCOC Act. There are no criminal cases against the Applicant. The Applicant is not involved in any manner with any crime with the accused Suresh Pujari or Prasad Pujari at the earlier point of time. There are no criminal antecedents against the Applicant. In the bank statement, there is no reference of any amount being deposited into the account of the accused Khandagale. The counsel refers to the statement of Gupta which is on page 215 of the paper book as well as the statements of other witnesses at page 232 and page 234. From the tenor of the said statement, it is apparent that Prasad Pujari is independent person. He has nothing to do with the gangster Suresh Pujari. It is also apparent from the said statements that

Suresh Pujari has identified the other person as the Applicant. The learned counsel pointed out the material on record and submitted that there is no evidence that the Applicant is a member of Suresh Pujari gang. The case for invoking the provisions of MCOC Act is not made out. It is further submitted that the account of Khandagale is not produced. The alleged amount is not given to Suresh Pujari. It is, therefore, submitted that the prosecution has failed to establish that the Applicant is the member of the crime syndicate and therefore, no case is made out for invoking the provisions of MCOC Act. Only on the basis of the other allegations, the provisions of the said act cannot be invoked and the Applicant may be released on bail.

8. Learned APP strongly opposed the application for bail. It is submitted that there is sufficient evidence to show the involvement of the Applicant in the said crime. It is submitted that the arguments advanced at the instance of Applicant can at the most be agitated during the course of trial. It is submitted that Prasad Pujari has criminal background. It is also submitted that CDR record clearly shows that there was conversation between accused no.3 with Prasad Pujari as well as Suresh Pujari. Accused no.3 is the link between Prasad Pujari and Suresh Pujari. The acquaintance of the accused no.3 and the Applicant is already established by the prosecution. He pointed out the statement of accounts showing the transfer of money into the account of Khandagale. He also pointed out the statement of witness who had deposited the said amount. Reliance is also placed on the receipts which are at pages 296 and 297 of the compilation. Learned APP pointed out several statements which are part of the charge sheet, which according to him show the complicity

of the Applicant in the financial transactions. It is submitted that the said amount which was transferred is out of the extortion amount of the Pujari gang and, therefore, the Applicant is involved in the said crime and has to be considered as a member of crime syndicate. It is submitted that the visit of the Applicant to China is also one of the strong circumstance which shows the involvement of the Applicant in the said crime. The Applicant is involved in transferring the amount into the accounts of the co-accused. It is submitted that the co-accused in whose account the money was transferred, are involved in the crime. The Applicant cannot claim ignorance that he was unaware as to the involvement of the other accused in the crime and that the amount was transferred only on the instructions of the relatives of Prasad Pujari. It is submitted that the application preferred by the Applicant for bail may be rejected.

9. I have gone through the entire evidence on record. The complainant was threatened by Suresh Pujari and he was asked to part with the amount as extortion money. The complainant was also forwarded with SMS asking him to make the payment with immediate effect. The accused nos.1 and 2 were arrested and on their personal search they were found with the pistol, magazines and live cartridges as well as mobile hand set. During the course of investigation, the involvement of the other accused was revealed and all of them were arrested. It is the prosecution case that the Applicant and accused no.3 Gautam Mehta and others had gone to China to meet wanted accused Prasad Pujari. In the month of May-2015, the Applicant had received an amount of Rs.9 lakh and in July-2015 Rs.35 lakhs and Rs.20 lakh in August-2015 from accused no.7 Naresh Shetty and accused no.8 Ravi Gaikwad at Hotel Maharaja

and Hotel Gokul Anand at Dahisar, Mumbai and the amount of about Rs.64 lakh was sent to principal accusedSuresh Pujari, which was extorted from the victims. During the course of investigation it was also revealed that out of the amount of extortion received from main accused Suresh Pujari, he has transferred the amount of Rs.50,000/- in the account of accused no.5 Krishna Khandagale and amount of Rs.20,000/- in cash was handed over to accused no.3 Gautam Mehta. Rs.1 lakh was given to person by name Ravi at Surat and Rs.50,000/- were deposited in the State Bank account of Chhaya Patil at Sangli and an amount of Rs.50,000/- in the State Bank account of Ravikumar Chaudhary. The Applicant was involved in preparing vissa of family members of accused Prasad Pujari and the amount was received by him through hawala was transferred on the pretext of air tickets of wanted accused Prasad Pujari's family members. It was also transpired during the course of investigation that the accused were active members of organised crime syndicate. The accused were involved in continuing unlawful activities on behalf of their syndicate or gang and are involved in use of violence, intimidation, coercion and other unlawful means with the object of gaining pecuniary benefits and undue economic advantage for themselves and for their gang for which they are also involved in creating fear and terror in the minds of general public. The CDR record shows that accused no.3 was in constant touch with accused Prasad Pujari as well as accused Suresh Pujari. The said accused had visited China along with the Applicant. The link between the Applicant and the accused no.3 has been established and further the link between the accused no.3 and Suresh Pujari as well as Prasad Pujari has been established. It is true that there is no strong evidence showing the acquaintance Suresh Pujari and Prasad Pujari. However, the call record indicates that the accused no.3 was the main link between all these three persons and the financial transactions which are the subject matter of this prosecution, clearly shows involvement of the Applicant in the said crime and association with the said accused. The Applicant had been to China to meet accused Prasad Pujari along with accused no.3 Gautam Mehta and on the say of the accused Prasad Pujari in the month of May-2015, transferred Rs.9 lakh and Rs.35 lakh through accused nos.7 and 8 and Rs.20 lakh to accused no.8 which he received at Gokul Anand Hotel at Dahisar, Mumbai. The amount of Rs.64 lakh was sent to Suresh Pujari which was in respect of litigation about property in Pune. It is the prosecution case that out of the amount of extortion received from main accused Prasad Pujari, he had transferred the amount of Rs.50,000/- in the bank account of accused no.4 Krishna Khandagale and amount of Rs.20,000/- in cash handed over to accused no.3 Gautam Mehta and Rs.1,00,200/- were given to person by name Ravi at Surat and Rs.50,000/- in the State Bank account of Chhaya Patil at Sangli as well as Rs.50,000/- were transferred in the account of Ravikumar Chaudhary in Bihar which was the amount of extortion received from the broker by giving threats to him. The link of the arrested accused has been established with the gang of Suresh Pujari. The statements of witnesses which were recorded by the investigating machinery and the documents collected from bank authorities show direct transactions of receipt of amount by the Applicant and transfer of amount as alleged in the charge sheet in the name of other accused. The family members of the accused Prasad Pujari had travelled with the Applicant to China. The document shows the transactions between accused Prasad Pujari whose alias name is Johny and how the amount received through hawala is transferred on the pretext of air tickets and vissa business by the Applicant-accused. Prima facie material is available against the accused nos.1 to 8 and the Applicant as stated above. The offences levelled against the accused are under the MCOC Act which includes offence of conspiracy between the members of the gang headed by wanted accused Suresh Pujary and Prasad Pujary at whose instance gang is operating, issuance of threats to businessmen and brokers for extorting illegal funds from them. The case of the Applicant cannot be isolated from the other accused as prima facie link is established by prosecution to connect the role of Applicant with accused nos.1 to 8 and wanted accused. So prima facie case is made out against the Applicant.

10. The learned counsel for the Applicant had relied upon the decision of Supreme Court in the case of Ranjit Singh Sharma Vs. State of Maharashtra and another reported in (2005)2-Bom.C.R.(Cri)-567. The decision was cited to support the arguments and the prayer for grant of bail. However, taking into consideration the nature of evidence against the Applicant, as discussed hereinabove, the bail cannot be granted to the Applicant. Hence, I pass following order :

ORDER

(i) Bail Application No.143 of 2017 is rejected.

(PRAKASH D. NAIK, J.)

MST