

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 730 OF 2017

Mr. Yuvraj Magar

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr. A.P. Mundargi, Senior Advocate i/b Shradha Sawant for the Applicant.
Mrs. Rutuja Ambekar, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 28th SEPTEMBER, 2017

P.C.:

. This is an application for bail in C.R. No. I-314/2015 dated 16.01.2015 registered with Bharati Vidyapith Police Station, District Pune under Section 395 of the Indian Penal Code, Section 3(25) of the Arms Act, Section 37(1) read with Section 135 of the Bombay Police Act and under Section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999.

2 It is the prosecution case that co-accused Lalit Kollam is the head of the organised crime syndicate of which the Applicant is a member. The said syndicate is indulging the crime of robbing passengers on the highway. It is the categorical case of the prosecution that the said syndicate headed by Lalit and his accomplices including Applicant in furtherance of the activities are committing offences using deadly weapons with a view to gain economical benefits and other

undue advantage. It is the further prosecution case that, during the course of investigation of the present crime i.e. C.R. No. 4/2015 registered with Bharati Vidyapith Police Station, Pune. It was revealed that the said offence was committed in furtherance of a conspiracy of the organised crime syndicate headed by Lalit Kholam and accordingly, prior approval under Section 23(1)(A) of Maharashtra Control of Organised Crime Act, 1999 (for the sake of brevity 'the MCOC Act') dated 10.01.2016 was granted by the Competent Authority. During the course of the investigation, the investigating agency has recorded statements of two co-accused namely Aadesh Netke and Aakash Kumbhar under Section 18 of the MCOC Act. After completion of investigation, the Competent Authority granted sanction as contemplated under Section 23(2) of MCOC Act and the police subsequently filed charge-sheet before the Court of Competent Jurisdiction. The application for bail under Section 439 of Cr.P.C. preferred by Applicant has been turned down by the Trial Court by its order dated 20.01.2017.

3 The learned Senior Counsel appearing for the Applicant submitted that in the present crime i.e. C.R. No. 314 of 2015, the first informant Raju Sangar has failed to identify the Applicant in test identification parade. He further submitted that apart from the aforesaid two confessional statements of co-accused wherein the name of the Applicant mentioned, there is no other evidence against the Applicant which would connect him either with the present crime or with the said organised crime syndicate headed by Lalit. He submitted that in view thereof, it

cannot be said that the Applicant is guilty of an offence under the MCOC Act and therefore, the Applicant may be released on bail.

4 The Supreme Court in the case of *State of Maharashtra V/s. Bharat Chaganlal Raghani & Ors.* reported in *AIR 2002 SUPREME COURT 409* while dealing with a confessional statement recorded under Section 15 of TADA in paragraph No. 57 has held as under:

“57. Learned counsel appearing for A5 and A6 submitted that despite holding the confessional statements Exhibits 147 to 150 being admissible, their clients cannot be convicted and sentenced for the offences charged because the confessions have been retracted and there is no corroboration of their contents. There is no denial of the fact that the judicial confessions made are usually retracted. Retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law, as A5 and A6 are proved to have made. Corroboration of the confessional statement is not a rule of law but a rule of prudence. Whether in a given case corroboration is sufficient would depend upon the facts and circumstances of that case. In order to sustain a conviction on the basis of a confessional statement, it is sufficient that there is its general corroboration. Dealing with the scope of Section 15 of the TADA Act and referring to its earlier judgments this Court in *S.N. Dube v/s. N.B. Bhoir* (2000) 2 SCC 254 held that confession of the accused recorded under Section 15 of TADA Act is a substantive piece of evidence which can be used even against the co-accused if held to be inadmissible voluntarily and believable. Explaining the position of law the Court held:

"Section 15 of the TADA Act makes certain confessions made to police officers admissible in the trial of such persons or co-

accused, abettor or conspirator for an offence under the Act or rules made thereunder. This Court considering its constitutionality in Kartar Singh v/s. State of Punjab (1994) 3 SCC 569 observed at (SCC p.680, para 253) that:

"having regard to the legal competence of the legislature to make the law prescribing a different mode of proof, the meaningful purpose and object of the legislation, the gravity of terrorism unleashed by the terrorists and disruptionists endangering not only the sovereignty and integrity of the country but also the normal life of the citizens, and the reluctance of even the victims as well as the public in coming forward, at the risk of their life, to give evidence."

and held that the impugned section cannot be said to be suffering from any vice of constitutionality. Section 15 is thus an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it. Interpreting the said provision this Court in *State V/s. Nalini* (1999) 5 SCC 253 (popularly known as the Rajiv Gandhi murder case), has held that a confession recorded under Section 15 of the TADA Act is to be considered as a substantive piece of evidence not only against the maker of it but also against its co-accused. There was a difference of opinion amongst the three learned judges who decided that case regarding the evidentiary value of such a confession against the co-accused if tried in the same case. Wadhwa, J. observed that what weight should be attached to such a confession is a matter of discretion of the court and as a matter of prudence the court may look for some corroboration before relying upon such confession against the co-accused. Quadri J, held that the rule of prudence would require that the court should examine the same with great care and it should not be relied upon unless it is corroborated generally by other evidence on record. Thomas, J. held that: (SCC p.309 para 99):

"Thus the established position which gained for a very long time is that while a confession is substantive evidence against its maker it cannot be used as substantive evidence against another person even if the latter is a co-accused, but it can be used as a piece of corroborative material to support other substantive evidence."

Relying upon the decision of this Court in Kalpnath Rai v/s. State [1997 (8) SCC 732] it was submitted by the learned counsel for the respondents that even a confession made admissible under Section 15 of the TADA Act can be used as against the co-accused only in

the same manner and subject to the same conditions as stipulated under Section 30 of the Evidence Act. An observation to the same effect is to be found in para 75 of the judgment. In fact no such point fell for decision in that case and it appears to be a passing observation only. In view of the decision of this Court in Nalini Case the said observation can now be regarded as the correct position of law. The correct legal position is that a confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co-accused also otherwise held to be admissible, voluntary and believable."

In that case also the trial Judge had held the confession inadmissible on the ground of having been recorded in breach of Rules 15(2) & (3) of the TADA Rules. In the facts and circumstances of that case the court held that:

"We fail to appreciate how any departure from the form or the words can adversely affect the object of the provision or the person making the confession so long as the court is able to conclude that the requirements have been substantially complied with. No public purpose is likely to be achieved by holding that the certificate and memorandum should be in the same form and also in the same terms as are to be found in Rule 15(3)(b). We fail to appreciate how the sanctity of the confession would get adversely affected merely because the certificate and the memorandum are not separately written but are mixed up or because different words conveying the same thing as is required are used by the recording officer. We hold that the trial court committed an error of law in holding that because the certificates and memorandums are not in the same form and words they must be regarded as inadmissible."

5 The provisions of Section 18 of MCOC Act are analogues to the provision of Section 15 of TADA Act and therefore, a confession of co-accused recorded under Section 18 of MCOC Act is a substantive piece of evidence and a conviction can be based on the same.

6 In the present case, co-accused Aadesh Netke has unequivocally named the Applicant as a member of said syndicate who has committed the present crime in

question on 04.09.2015. Other co-accused namely Akash Kumbar has also named the Applicant as a member of their syndicate, who are regularly indulging in the crime of committing robberies on highway. After taking into consideration the material available on record and the confessions of co-accused recorded under Section 18 of the MCOC Act, it is difficult for this Court to hold that the Applicant is not guilty of an offence committed under the MCOC Act.

7 In view of the above, the application for bail is rejected.

(A.S.GADKARI, J.)