

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.823 OF 2017
IN
M.C.O.C. SPECIAL CASE NO.1 OF 2013
@ 9 OF 2014

Vijay @ Raju Chandrakant Mahadik,
Age 36 years, R/o.Kamat Ghar, Ganesh Nagar,
next to Public Toilet, Bhiwandi, Dist.Thane
(Presently at Thane Central Jail)

Applicant

versus

The State of Maharashtra
through Kopri Police Station,
Vide C.R.No.I-84 of 2012

Respondent

Mr.Vinod Kashid for applicant.
Mr.M.G.Patil, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 1st August 2017

PC :

1. The applicant was arrested on 30th June 2014 by Kopri Police Station in connection with CR No.I-84 of 2012 registered with the said police station for offences punishable under Sections 143, 147, 148, 149, 307, 120-B of Indian Penal Code and Sections 3, 25(I-B) (A), 27(2) of Arms Act and Sections 37(1) and 135 of Bombay Police Act. The provisions of Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act') were also invoked against the applicant-accused under Sections 3(1)(II), 3(2) and 3(4) of the said Act.

2. The brief facts of the prosecution case are as follows :

(a) On 13th July 2012, at about 8.30 p.m., the complainant Pravin Kanade along with his friend Mr.Vilas Ghorpade were talking to each other in the office of complainant. Thereafter the friend of the complainant Mr.Rajesh Ghadge (injured) came to the complainant's office and they were all talking to each other. Outside the office, Mr.Dinesh Koyte and Mr.Etorine Buthello were talking to each other. At about 9 p.m; the injured left the office to go to his house and reached up to the main door;

(b) The complainant heard the sound of busting cracker at that time and the injured immediately came into the office and fell down in front of Mr.Ghorpade. Two persons entered into the office, who were armed with pistols. They were identified by Mr.Ghorpade as Ramesh Salve and Raju Mahadik (applicant herein). Mr.Ghorpade abused Rajesh Salve and hence he moved behind. Two persons entered into the office and one of them had a pistol which was pointed out towards the complainant and he was threatened that he should keep quite otherwise he will be shot. Other person was having chopper and he assaulted the injured on his head. The person who was standing outside the office was shouting “त्याची मान काप, जिवन्त सोडु नको”. Thereafter all the persons ran away from the spot. The injured was taken to the hospital by the witnesses;

(c) During the course of investigation, the statement of the injured was recorded wherein he disclosed that the accused Rajesh Salve and Raju Mahadik fired at him with bullet and assaulted him with chopper. Several persons were arrested in the said crime. The applicant was, however, arrested on 30th June 2014.

3. The applicant preferred an application for bail before the Special Court for MCOC Act which was rejected on 2nd February 2017. While rejecting the said application, the Court had observed that the name of the applicant is disclosed in the first information report as he was one of the assailants and is identified by the injured. In the statement of injured also, name of the applicant is referred to as the assailant. It was further observed that the applicant was on bail in MCOC Case No.1 of 2009 and MCOC Case No.1 of 2010 as well as MCOC CR No.64 of 2012 on the date of offence, and while he was on bail, the applicant has committed present crime and in view of Section 21(5) of MCOC Act, the applicant is not entitled for bail.

4. Learned advocate for the applicant advanced several submissions in support of the prayer for bail. In the application also, several grounds are raised in support of bail. It is submitted that the injured in his statement has not stated the part of his body on which the applicant has assaulted the injured. It is further submitted that there are about seven eye witnesses to the incident, however, none of them have stated that the applicant had assaulted the injured. There are contradictions between the statements of the injured and the eye witnesses and, therefore, it is very difficult to rely upon the statements of the injured and the eye witnesses. It is further submitted that the complainant had referred to the unknown person having fired towards the injured and another person having assaulted by weapon and no role was assigned to the said persons, however, he did not whisper about role of the present applicant. There were three unknown persons and one known accused, however, the complainant had assigned the role to all the accused in

the statement which was recorded on 14th July 2012. However, police have arrested 15 persons in the said offence without assigning any role to them. The applicant was arrested on 30th June 2014 i.e. after about two years after the date of incident and the arrest of the applicant and recovery of weapon is not in close proximity of time. It is submitted that several other persons are released on bail by the Trial Court as well as this Court and the applicant is entitled for the bail on the ground of parity. It is submitted that the accused namely Rohit Gaikwad, Nilesh Paradkar, Prashant Deshmukh, Bala Mudaliyar are released on bail by Special Court in spite of having antecedents against them. The accused Rajesh Bhalerao, Mandar Bhosale, Manish Salve are granted bail by this court in spite of antecedents against them. In view of the above, the applicant is also entitled for bail. It is submitted that according to the injured, the applicant was having chopper and as per the version of the eye witness Vilas Ghorpade, the applicant was having a pistol. This is a major contradiction which creates doubt about the veracity of evidence collected by police. There are several contradictions in the statements of eye witnesses Pravin Kanade, Etorine Buthello, Dinesh Koyte, Rajesh Ghadge and Vilas Ghorpade. Although it is the prosecution case that prior to the alleged incident there was a meeting between the accused, there is no reference of the applicant as a participant in the said meeting. It is further submitted that the applicant has been falsely implicated in the present case. At the time of alleged incident, the applicant was in Goodluck Hotel at Bandra and thereafter he went to Siwree Court to meet his advocate where he was present till 9.00 p.m.. He provided said information to police by letter dated 24th August 2012, however, the police did not verify the CCTV footage of Goodluck Hotel at the relevant time or have not

recorded the statement of his advocate. It is further submitted that the applicant is in custody since the date of arrest and the trial has not yet commenced.

5. Learned APP submitted that there is ample evidence against the applicant and he is not entitled for bail. The eye witnesses have attributed the overt act to the applicant. The injured person has named the applicant as one of the assailants. It is further submitted that contentions raised by the applicant with regards to the contradictions in the statements of the witnesses or alibi, cannot be considered at this stage and it would be a matter of evidence which can be agitated at the time of trial as defence by the applicant. It is further submitted that there is recovery of weapon at the instance of applicant. The cases of other accused who were granted bail are different than that of the applicant. The said accused were not attributed the role of being assailants in the crime. It is submitted that the applicant is having antecedents. The cases pending against the applicant includes cases under MCOC Act and while on bail in the said cases, the applicant is involved in the present case. It is submitted that in view of Section 21(5) of MCOC Act, the applicant is not entitled for bail. It is also submitted that the applicant was absconding for a period of about two years and was arrested thereafter.

6. I have perused the documents on record. The investigation machinery has recorded statements of various witnesses. The prosecution is relying on the statement of complainant and the injured person. On perusal of the statement of the injured person it is apparent that clear overt act has been attributed to the applicant.

The complainant has also named the present applicant as one of the person amongst assailants in his statement dated 13th July 2012. The submissions advanced by learned advocate for the applicant that there are serious infirmities in the statements of witnesses, which suffer from contradictions, is a matter of appreciation of evidence, which has to be considered at the time of trial. It is submitted that on account of the nature of statements of several witnesses who were purportedly eye witnesses, the statement of the complainant and that of the injured person should be disbelieved. It is difficult to accept the said contention at this stage. The ground of alibi also cannot be adjudicated while considering the application for bail and it would be open to the accused to raise the said issue as defence during trial. The injured has disclosed the name of Ramesh Salve and the applicant as persons who fired and assaulted with chopper. Ramesh Salve was arrested and weapon was recovered at his instance. During the course of investigation it was revealed that the applicant is a member of organized crime syndicate which is run by Navnath Gurav. On the basis of material, the provisions of MCOC Act were applied in the present proceedings. During the course of investigation it was revealed that there was previous enmity between Mandar Bhosale, Bala Mudliyar and Rohit Gaikwad on account of their octroi business and they assumed that the injured had given information about their business to police. Hence, they approached the accused Ramesh Salve who wanted to take revenge against the injured on account of enmity. On the basis of statement of the applicant under Section 27 of the Evidence Act, a chopper was recovered from him. The witnesses have identified the applicant in the identification parade. Several cases are registered against the applicant which are pending in the Court and it appears that he is a

habitual offender. The prosecution has relied upon list of cases which is reflected in the affidavit-in-reply dated 24th July 2017 filed by the police. The list enumerated therein reference to about eleven cases registered against the applicant, which are as follows :

Sr. No.	Police Station	C.R. No.	Sections
1	Vakola	I-322/2008	324, 34 of IPC
2	DCB, CID, Mumbai	I-133/2008	399, 402 of IPC with Sections 3, 25, 37 of Arms Act and 37(1), 135 of Bombay Police Act.
3	Kopari, Thane	I-84/2012	307, 120-B, 34 of IPC r/w Sections 3, 25, 37 of Arms Act and S.37(1), 135 of Bombay Police Act.
4	Turbhe, Navi Mumbai	I-351/2008	307, 341, 427, 34 of IPC r/w S.3, 25, 37 of Arms Act r/w S.3(1), (2), 3(2), 3(4) of MCOC Act.
5	Bazarpeth Thane	I-25/2010	307, 323, 353, 120-B, 143m, 147, 148, 149 of IPC r/w S.37(1), 35 of Bombay Police Act r/w MCOC Act.
6	DCB, CID, Mumbai	I-83/2012 & I-253 /2012	399, 402 of IPC r/w S.3, 25 of Arms Act.
7	Kherwadi Mumbai	I-74/2011	S.384, 34 of IPC
8	Kherwadi Mumbai	I-64/2012	141, 143, 144, 147, 149, 307, 324, 506(2) of IPC r/w S.3,4,25 of Arms Act r/w S.37(1), 135 of Bombay Police Act r/w S.3(1)(ii), 3(2), 3(4) of MCOC Act.
9	Navghar Mumbai	LAC No.20/2014	3, 25 of Arms Act
10	Rabodi Thane	I-229/2013	307, 143, 147, 148, 149 of IPC r/w 3, 25 of Arms Act r/w 37(1), 135 of Bombay Police Act.
11	Bhiwandi City, Thane	I-155/2014	452, 504, 323, 506 of IPC r/w 3, 25 of Arms Act and 37(1), 135 of Bombay Police Act.

Learned advocate for applicant, however, submitted that case at

sr.nos.1,2,8 and 9 have resulted in acquittal. The case listed at sr.no.3 is the present case. Taking the submission advanced by learned counsel for applicant that the applicant has been acquitted in some of the cases, still there are several other cases which are pending in the Court of law against the applicant. The cases at sr.nos.4 and 5 include offences under MCOC Act.

7. It is also noted that the Special Court under MCOC Act as well as this Court has granted bail to the co-accused. The orders granting bail has been annexed to the application. I have perused the said orders. I find that the said accused were granted bail on the basis of material which is available against them in the present crime. The order granting bail to accused Rohit Gaikwad is annexed at page 20 of this paper book. In paragraph 5 of the said order it has been observed that the said accused was not an assailant and has not participated in the assault. The benefit of bail was granted to the said accused on the basis of the order granting bail passed by this Court in favour of accused Mandar Bhosale and it was observed that accused Rohit Gaikwad is entitled for parity. The Special Court has also granted bail to accused Nilesh Paradkar which is at page 41 of the paper book. On perusal of the observations made in the order, it is apparent that said accused was also not one of the assailant. It is true that the said accused was having antecedents including one case under MCOC Act. However, considering the overt act attributed to him, he was granted bail and his case cannot be equated with the present applicant. The accused Prashant Deshmukh was granted bail by the Trial Court also on a similar ground that he was not assailant although he had antecedents and one of the case was registered under MCOC Act. Thus, the said accused was also granted bail

considering the overt act which was attributed to him. The other accused namely Bal Mudliyar, Rajesh Bhalerao and Mandar Bhosale were also granted bail by the Special Court under MCOC Act on the ground that they were not participants to the actual assault on the injured person. In the order granting bail there is no reference to any antecedents against Bal Mudaliyar, Rajesh Bhalerao and Mandar Bhosale. The accused Mandar Bhosale was granted bail by this Court by order dated 17th July 2013. It is observed that the case against the said accused is that he was a conspirator and except the fact that he was present at the particular place with the co-accused where the conspiracy hatched, there is no other material to connect him with the crime. It was also observed that bar under Section 21(4) of MCOC Act would not apply to him. The accused Manish Salve was also granted bail by this Court by order dated 30th March 2016 which order has been annexed to this application. The Court has observed that there are antecedents against him. It is pertinent to note that there is a reference to antecedents against him in the order and all cases are pertaining to Sections 363, 366, 342, 394, 506 and 324 of Indian Penal Code. Thus, there was no case pending against him under the provisions of MCOC Act. In the light of the grounds on which the said accused were granted bail, the case of the applicant can be distinguished. The said accused were not actual assailants and in spite of the fact that against some of them the case under MCOC Act was pending, considering the nature of evidence, they were granted bail. The present applicant has been attributed the role of assault. He has been named in the FIR as well as in the statement of complainant. There is recovery evidence against him. Therefore, present applicant has played a distinct role in comparison to the other accused who are granted bail by this Court as well as by

Special Court. The embargo laid down under Section 21(4) of MCOC Act as well as Section 21(5) of the MCOC Act, cannot be brushed aside. In view of the evidence collected by the investigating authority against the applicant and the role assigned to him, I am not inclined to grant bail to the applicant.

8. Hence, I pass following order :

ORDER

- (a) Criminal Bail Application No.823 of 2017 is rejected;
- (b) Bail Application is disposed off.

(PRAKASH D. NAIK, J.)

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