

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 718 OF 2016

Chinamani Balasaheb Pawle	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. S.V. Kotwal a/w. Mr. Sharad Bhoite, Advocate for the applicant.
Mr. S.S. Pednekar, APP for the State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **22nd February, 2017.**

P.C.:

This Application is moved by the applicant/accused for bail, as he is facing prosecution for the offences punishable under sections 395, 341, 353 r/w. 34 of the Indian Penal Code and under sections 3(i)(ii), 3(2), 3(4) of MCOC Act in C.R. No. 128 of 2014 registered with Shikrapur Police Station, District Pune. The offence is registered at the instance of Laxman Bhosale on 2nd May, 2014.

2. It is the case of the prosecution that the complainant is a driver on a container. On 1st May, 2014 he had to take consignment of importing liquor which was to be transported from Aurangabad to Navasheva, Navi Mumbai. The police constable of Excise Department was with him. When the container reached near Shirur, 4 motor cyclist on two motor cycle stopped the container and three

persons entered the cabin of the container. It is the case of the prosecution that they robbed the complainant of Rs.10,000/- which was given for diesel. They also slapped the police personnel. They took away his cell phone and then ran away. The complainant noted down the numbers of the motor cycles, i.e., MH-14 1010 and MH-14 1051. Thus, they have committed robbery of Rs.12,000/-. The offence was registered and the applicant/accused was arrested on 24th May, 2014. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that there is no evidence against the applicant./accused in the present case. Rs.1,500/- was recovered from him. The applicant/accused was not identified in Test Identification Parade which was conducted on 10th July, 2014. The learned counsel further submitted that apart from the offence of robbery, the applicant/accused is falsely implicated under MCOC Act on the ground that two offences were registered against him, i.e., C.R No. 157 of 2014 under section 399 of Indian Penal Code on 24th May, 2014 and C.R. No. 156 of 2014 under section 395 of Indian Penal Code. The learned counsel further submitted that applicant/accused is innocent and he is not attached to any syndicate much less the

syndicate of Santosh Nagare. He submitted that these two offences have been shown committed in the month of May, 2014. Earlier the applicant/accused had no history of any offence. He is not a member of any syndicate .

4. Learned APP opposed the Bail Application. He submitted that the applicant/accused is arrested under MCOC Act. In all the three cases, he was found with gang leader Santosh Nagare. He submitted that the competent authority has given sanction to invoke MCOC Act against the syndicate of Santosh Nagare wherein applicant/accused is the member of the said syndicate. Learned APP further submitted that this being the MCOC Act, there is bar under section 21 of MCOC Act. Considering the criminal antecedents of the applicant/accused, there is possibility that he will again commit some offence and therefore, the applicant is not to be bailed out.

5. Perused the FIR, statements of the witnesses, record and papers which are placed before me. In the present case, at the instance of the applicant/accused, recovery is only of Rs.1,500/- on 8th August, 2014. The accused was arrested on 24th May, 2014 and

the incident of robbery has taken place on 1st May, 2014. Moreover, in Test Identification Parade which was conducted on 10th July, 2014 though applicant/accused was put for identification, he was not identified by either of the witnesses. Thus, *prima facie* there is no sufficient evidence to connect the applicant/accused with the present substantive offence. It is true that there are two cases of similar nature pending against the applicant/accused wherein the applicant/accused is found with the gang leader Santosh Nagare. The offences are registered on 20th May, 2014 and 24th May, 2014. The offence registered on 24th May, 2014 is under section 399 of the Indian Penal code. The applicant/accused was 20 to 21 years old at the time of incident. Under such circumstances, considering the nature of offence and age of the applicant/accused, I am of the view that bar under section 21 of MCOC Act will not come in the way. Hence, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) Application is allowed.
- (ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.40,000/- with one or two sureties in the like amount;

- (iii) The applicant shall not tamper the evidence;
- (iv) The applicant shall not pressurize the complainant or witnesses;
- (v) The applicant shall not jump the bail;
- (vi) The applicant shall attend all the court dates;
- (vii) The applicant shall not commit any offence hereafter under Indian Penal Code;
- (viii) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address;
- (ix) 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.

7. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)