

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1434 OF 2017

Mrs.Fiza Rahim Hussain Shaikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Ganesh Iyer, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.I-22 of 2015 registered with Police Station, Dombiwali for offence punishable under Sections 394 read with Section 34 of the Indian Penal Code as well as under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as 'MCOCA' for the sake of brevity), by this application, is seeking her release on bail during pendency of the trial.

2 Heard the learned Advocate appearing for the applicant/accused. By drawing my attention to the FIR dated 04/02/2015 lodged by the victim lady, the learned Advocate for the applicant submits that co-accused Wasim came to be arrested

by Dombiwali Police in some other offence. Under his confessional statement, one ornament involved in the robbery came to be recovered, whereas another gold chain, according to the prosecution case, came to be recovered from Sadik. The present applicant is neither involved in the said incident, nor there is any evidence to point out that the present applicant is a member of a Organized Crime Syndicate. Except a confessional statement of co-accused Sadik @ Sadhu, there is no evidence against the applicant. As the crime in question of robbing the First Informant was neither committed by the present applicant, nor the present applicant is stated to have aided the accused in commission of the said crime, the applicant is entitled to be released on bail. Observations of the learned Single Judge of this Court made in Order dated 16/03/2016 passed in Bail Application No.1918 of 2014 to the effect that for each and every offence committed by other members of the gang, all the members cannot be charged and that would amount to apply the doctrine of vicarious liability which is unknown to criminal jurisprudence in India, are pressed in service for this purpose.

3 The learned Additional Public Prosecutor opposed the application by placing reliance on confessional statement of Sadik @ Sadhu and also relied on Order dated 10th January 2017 passed by the learned Single Judge of this Court in Criminal Bail Application No.1395 of 2016 in respect of co-accused Sadik @

Sadhu. The learned Additional Public Prosecutor further argued that there are in all 16 crimes registered against the present applicant in which she is not attending the Court.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet.

5 'Organized Crime' is defined under Section 2(e) of the MCOCA and the said definition reads thus :

“(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency”

6 At this stage, it is also relevant to quote definition of the term 'Organized Crime Syndicate' given under Section 2(f) of the MCOCA, which reads thus :

“(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;”

Keeping in mind these definitions, one will have to consider the case in hand.

7 According to the prosecution case, in the incident of robbing the First Informant on 04/02/2015, co-accused Wasim came to be arrested subsequently and one of the ornament belonging to the First Informant came to be recovered from him under his confessional statement. The another one is recovered at the instance of co-accused Sherabi, who happens to be mother of the present applicant.

8 During the course of investigation, confessional statement of co-accused Sadik @ Sadhu adhering to the provisions of MCOCA came to be recorded by the Deputy Commissioner of Police, Zone IV, Ulhasnagar, Thane. This confessional statement of the co-accused Sadik shows that Sherabi is the 'gang leader' of the Organized Crime Syndicate'. The present applicant is her daughter. Confessional statement of Sadik @ Sadhu further shows that Sherabi leads the Organized Crime Syndicate doing offences of chain snatching. Sherabi deploys her two sons and Wasim @ Pinchoti and Tabrej for executing chain snatching. Looted ornaments are then sold by Sherabi and her daughter Fiza i.e. the present applicant. Sadik @ Sadhu has stated that he as well as his friend Kasim is also members of the Organized Crime Syndicate

formed by Sherabi. This confessional statement indicates that the present applicant is a member of Organized Crime Syndicate indulged in continuing unlawful activity of chain snatching and disposal of the looted chains, as a member of the Organized Crime Syndicate by use of violence.

9 In fact, while disposing of the Bail Application of Sadik @ Sadhu, the learned Single Judge of this Court has accepted his confessional statement and rejected his Bail Application.

10 In the light of foregoing material against the present applicant, no case for bail is made out. The application is, therefore, rejected.

(A.M.BADAR J.)