

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 1395 OF 2016

Sadik @ Sadhu Sahajman Irani @ Sayyed .....Applicant

V/s.

The State of Maharashtra ....Respondent

Mr. Maitreya G. Shukla Advocate for Applicant.

Ms. Veera Shinde APP for the State.

Mr. D. B. Patole, PSI, Thane Crime Branch.

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATED : 10<sup>th</sup> JANUARY, 2017.**

**PC :**

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 27/10/2015 in crime no. 22 of 2015 registered at Dombivli Police Station for offence punishable under section 394 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 04/02/2015, a report was lodged at the police station by a woman alleging therein that on 04/02/2015, she had been to Ganesh Mandir at Dombivli, while she was returning, she had seen some persons standing an ambush. They followed her and snatched the golden

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chain from her person. They had also snatched Mangalsutra weighting about 3.5 Tolas from her neck. Crime no. 22 of 2015 was registered against unknown persons. In the course of investigation, present applicant was arrested. He was transferred in crime no. 22 of 2015 from crime no. 116 of 2015 while he was in Judicial custody.

3) It is the case of the prosecution that applicant is a member of crime syndicate run by Sherab Yusuf Sayyad. The learned counsel for the applicant vehemently submits that this is the first offence which is registered against him along with Sherabi Yusuf Sayyad. In the other two offences i.e. in crime no. 155 of 2015 and 298 of 2015 he is shown as co-accused with Wasim @ Pinchoti Firoz Irani and Sadaq Ali Yusuf Sayyad as well as Abbas Salim Kasam Hussain. The learned counsel has further submitted that there is no material on record to even remotely indicate that the applicant belongs to the organisation run by Sherabi Yusuf Sayyad. It is further submitted that after he was arrested in crime. 22 of 2015, investigating agency has arraigned him in almost 10 cases registered at various police stations for offence punishable under section 392 r/w 34 of the Indian Penal Code and it is on the basis of the collection of the charge-sheets that the applicant is being prosecuted under the

provisions of MCOCA. The learned counsel submits that this would cause prejudice to the applicant as he is being tried as member of organisation of Sherabi Yusuf Sayyad.

4) Perused papers of investigation. In the course of investigation, the confessional statement of the applicant has been recorded. Applicant has categorically stated that most of the residents of Irani Basti are indulging into similar offences such as theft, robbery etc. He has narrated the manner in which the residents of Irani Basti commit theft, robbery and dacoity. He has also admitted that he is also committing similar offences. It is further stated that accused Sherabi Yusuf Sayyad is leader of organisation and that she is involved into all the offences along with his two sons Mehandi and Sadaq Ali. He has specifically stated that due to financial stringency, he has also chosen to indulge into similar offences. He has stolen motorcycle and golden chain which used to be entrusted with the leader of the syndicate. He has admitted to have committed the present offence. There is recovery of stolen motorcycle at his instance.

5) The question whether MCOCA would be invoked in the present case would be an academic issue or rather it can be the subject matter to be

challenged before the Hon'ble Division Bench. As far as the present case is concerned, as on today, the confessional statement of the accused/applicant is more than sufficient to hold that the applicant is involved in the present case and is a member of syndicate run by accused no. 1.

6) The learned counsel submits that applicant is in jail for more than one year and that he deserves to be enlarged on bail.

7) Liberty of an individual cannot be allowed to be outweighed the interest, safety and security of the society. Taking into consideration the confessional statement, it would be difficult to record a finding under section 21 (4) of the MCOCA to the effect that once accused is enlarged on bail, he may not indulge into similar offences.

8) Application, being sans merits, stands rejected.

**(SMT. SADHANA S. JADHAV, J.)**