

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1431 OF 2016

Sunil Thorat ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms. Neha Philip appointed as Amicus Curiae for the Applicant.
Mr.S.H.Yadav, APP for the State/Respondent.
Mr.S.A.Kahale, PSI, Shirdi Police Station, Ahmednagar (present)

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CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 18th January 2017

P.C.:

1. This application is moved for bail through jail. The applicant-accused is arrested in C.R.No.118 of 2015 for offences punishable under sections 394, 323 r/w 34 of the Indian Penal Code and sections 3 (1) (ii) and 3 (4) of the MCOCA. The incident took place on 28th May 2015. Bhausahab Mogal Gaikwad is the complainant.

2. It is the case of the complainant that on 28th May 2015 at around 10.45 a.m., when he was going from Ranjangaon to Ves alongwith his tempo, three unknown persons stopped the tempo. The applicant-accused was one of them, and they have committed robbery.

They robbed cash of Rs. 12000/-, mobile phone of china company and licence of the driver. Thereafter, the applicant-accused was arrested on 6th July 2015 in other C.R., and then he was transferred in the present C.R.No. 118 of 2015. Since then the applicant-accused is in prison and therefore, he moved an application for bail on 18th April 2016. The amicus curiae was appointed to argue his bail application.

3. It is submitted that the applicant-accused is falsely implicated in the present case and other cases. The applicant-accused does not know the co-accused. He was not associated with them in any manner. He submitted that he is falsely implicated under MCOCA, though he does not belong to any group. He argued that there is no offence against the applicant-accused. He is only arrested on suspicion. No muddemal was recovered from him.

4. The learned APP submitted that the Investigating Officer found that the applicant-accused was involved in two offences of a similar nature alongwith co-accused Narayan Waikar and thereafter obtaining approval from the sanctioning authority, MCOCA was invoked against him.

5. The learned counsel submitted that panchnama in the present case took place 3 months after arrest of Narayan Waikar. There

is a recovery of Rs. 2500/- from him. She has further submitted that the applicant-accused has come from poor family. He is having responsibility of his mother, who is disabled. He is educated and, therefore, he be granted bail.

6. The learned APP opposed this application and submitted that the applicant –accused is a member of syndicate of Narayan Waikar. The police found his involvement in the said syndicate. He is arrested in other two cases of similar nature. He was identified in the present case by the complainant and one more witness and an amount of Rs. 2500/- was recovered from him. It is further submitted that one air gun and motorcycle were also recovered from him. Considering the involvement of the applicant-accused with the other co-accused Narayan Waikar, the Commissioner of Police gave sanction to invoke MCOCA and thus the applicant-accused is facing charges under MCOCA. Hence, bail application is to be rejected.

7. Perused the F.I.R. and the papers produced before this Court by the prosecution. The applicant-accused was identified by the witnesses in identification parade. At the time of commission of offence, air gun was used and there is a recovery of the air gun from the applicant-accused. Cash of Rs. 2500/- was recovered from the applicant accused. Syndicate is known by the name of Narayan Waikar and the

applicant-accused is involved with the gang of Narayan Waikar in the present case. The applicant-accused is associated with Narayan Waikar. Similarly, he is also accused in another case i.e. C.R.No. 107 of 2015. The applicant-accused alongwith the syndicate leader is prosecuted under sections 3 (1) (ii) and 3 (4) of the MCOCA for the offence of robbery in all the matters. In view of section 18 of the MCOCA, I am not satisfied that the applicant-accused has *prima facie* not committed offence and he would not commit similar offence if at all he is released on bail. Hence, Bail Application is rejected.

(MRIDULA BHATKAR, J.)