

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1811 OF 2015

Mosin Musa Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Nishan Gupta i/b V. R. Gupta Advocate for Applicant.

Ms. J. S. Lohakare APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 8th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 31/10/2012 in crime no. 74 of 2012 registered at Bazar Peth Police Station. In the course of investigation, upon considering the facts of the case, investigating agency had sought sanction for prosecuting all the accused in crime no. 74 of 2012 under the provisions of Maharashtra Control of Organized Crime Act, 1999. (Hereinafter referred as "MCOCA") After due application of mind, Sanctioning Authority had sanctioned prosecution of the accused/applicant along with others under the provisions of MCOCA. Investigation is

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completed and charge-sheet is filed against the present applicant and others for offence punishable under sections 392, 411, 414 r/w 34 of the Indian Penal Code and under section 3 (1) (II), 3 (2), 3 (4) of MCOCA. As far as the present applicant is concerned, investigating agency had filed supplementary charge-sheet. After application of MCOCA, the confessional statement of the applicant was recorded under section 18 of the MCOCA.

2) It is the case of the prosecution that on 20/03/2012 one Mrs. Jyoti Sangle had lodged a report at the police station alleging therein that on that day, while returning after morning walk and was passing front of Adharwadi Jail, two unknown persons had come on a motorcycle. They had snatched the golden Mangalsutra which was adorned by her. The value of the said Mangalsutra was Rs. 90,000/-. On the basis of the said report, crime no. 74 of 2012 has been registered at Bazarpeth Police Station.

3) It appears from records that there were complaints in respect of Mangalsutra and chain snatching and the investigating agency had investigated the matter from that angle and had arrested Rais Mogal who is accused no. 1 and Shashi Lashkar who is accused no. 2. It had transpired in the course of investigation that the organisation is headed by Rais Chand

Mogal. According to the prosecution, applicant is a member of the said organisation.

4) The learned counsel for the applicant vehemently submitted that applicant was shown as an accused in crime nos. 162 of 2012 under section 392 r/w 34 of the Indian Penal Code registered at Tilaknagar Police Station, crime no. 110 of 2012 for offence punishable under section 392 r/w 34 of the Indian Penal Code at Kasarvadawali Police Station, crime no. 147 of 2012 for offence punishable under section 392 r/w 34 at Kapurbawadi Police Station. It is submitted that the applicant has been enlarged on bail in all three offences and therefore in the present case also, he deserves to be enlarged on bail. The learned counsel for the applicant also submits that in crime no.74 of 2012, there is no active involvement of the present applicant and therefore, he deserves to be enlarged on bail.

5) As against this, the learned APP submits that the confessional statement of the applicant has been recorded under section 18 of the MCOCA. Upon perusal of the said statement, it can be clearly seen that there is a nexus between the applicant and the organisation run by Rais Mogal. The requirement of Law is that it would be sufficient to prosecuting a person

under the provisions of MCOCA, in the eventuality that more than two charge-sheets are filed against organisation. In view of the fact that applicant has similar criminal antecedents and that crimes are registered against him at three different police stations for the same offence, it would be difficult for this Court to record a satisfaction as contemplated under section 21 (4) of the MCOCA to the effect that while on bail, applicant may not commit similar offence.

6) In view of this, application stands rejected.

(SMT. SADHANA S. JADHAV, J.)