IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2420 OF 2016

Mr.Kiran Kamlakar Barsing ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.Sujit S. Mishra, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 6th DECEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.50 of 2015 registered with Police Station Sewree for offences punishable under Sections 461, 427, 285, 411, 395 read with Section 34 of the Indian Penal Code (hereinafter referred to as the 'IPC' for the sake of brevity), under Section 15(2) of the Petroleum and Mineral Pipeline Act, 1962, under Section 3 of the Prevention of Damages to Public Property Act, 1984 as well as under Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as 'MCOC Act' for the sake of brevity), by this application, is seeking his release on bail after filing of the charge-sheet.

2 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the FIR lodged by Kopulla Baskar, Senior Manager of Petroleum Company named B.P.C.L. and argued that on the basis of this FIR, initially, the Crime for offences punishable under Sections 379, 461, 427, 285 of the IPC as well as under Section 15(2) of the Petroleum and Mineral Pipeline Act, 1962 read with Section 3 of the Prevention of Damages to Public Property Act, 1984 came to be registered against the present applicant. He was arrested and was bailed out by the learned Court on 29/08/2015. The learned Advocate further argued that thereafter approval for invocation of provisions of MCOC Act was sought and on grant of approval, the applicant is rearrested by cancelling his bail. The learned Advocate argued that approval for invocation of provisions of MCOC Act, 1999 granted in the light of Section 23(1)(a) of the MCOC Act shows that there was reference to the offences punishable under Sections 379, 461, 427, 285, 411 506(2) of the IPC. The sanction accorded by the Commissioner of Police on 03/06/2016 is an outcome of total non-application of mind as Section 395 of the IPC is figuring in the said Order. It is a complete misnomer as approval was only for the offence punishable under Section 379 of the IPC. The charge-sheet, however, came to be filed for the offences punishable under Section 395 of the IPC. The learned Advocate drew my attention to the Clause No.16 of the charge-sheet and argued that Section 395 of the IPC came to be added at the time of

filing of the charge-sheet. There was no investigation after adding Section 395 of IPC. The learned Advocate further argued that intimidation is totally different from applying force which is required for the offence of robbery. The learned Advocate further argued that there is not a single charge-sheet against the present applicant and, therefore, Section 2(d) of the MCOC Act is not attracted in this case. He is not having any criminal antecedent. By drawing my attention to the reply filed the learned Advocate argued that reply is false because it is showing that all accused are having criminal antecedents. My attention is further drawn to the confessional statement of Shamiulla Beg to submit that no role in commission of offence punishable under the MCOC Act by the present applicant is reflected from the said confession, though it was subsequently retracted before the learned Chief Metropolitan Magistrate itself.

3 The learned Additional Public Prosecutor opposed the application by contending that many of accused persons are still absconding and only one accused is released on bail on medical ground as the said accused was severely suffering from tuberculosis. The learned Additional Public Prosecutor placed reliance on panchanama as well as statements of witnesses including that of a watchman named Mohd. Sayeed Mohd. Safi Khan.

4 I have carefully considered the rival submissions and also perused the entire material made available on record.

5 At the outset, it is necessary to put on record definitions of 'continuing unlawful activity' and 'organized crime' found in Section 2(1)(d) and (e) of the MCOC Act, which read thus :

> *(d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence ;*
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> *(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 In the matter of ***Sachin Bansilal Ghaiwal & Anr. v. State of Maharashtra*** reported in **2014(3) BCR (Cri.) 774**, the Division Bench of this Court have held that what is contemplated under Section 2(d) of the MCOC Act is that the activities

prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. It is further held that stress is on the unlawful activities committed by the organized crime syndicate. The requirement of one or more charge-sheet is *qua* the unlawful activities of the organized crime syndicate.

7 It is also worthwhile to note here that in the matter of ***Manjit Singh @ Mange v. Central Bureau of Investigation*** reported in **(2011) 11 SCC 578, (2011) 3 SCC Crime 413** while considering Section 15 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, it was held by the Honourable Apex Court that even if an accused making confession is acquitted, his confession can be used against the co-accused. Section 15 of the TADA is *para materia* with Section 18 of the MCOC Act. Keeping in mind this position of law, let us consider the case in hand.

8 It is well settled that that the FIR is not an encyclopedia of the crime. It is an instrument for setting the criminal law in motion. In the case in hand, the FIR lodged by the Officer of the Petroleum Company shows that the Petroleum Company noticed oozing of petroleum oil in the vicinity of one closed godown. The oil was coming out from the shutter of the closed godown and flow was of such a magnitude that the fire brigade was required to be summoned. Petroleum Company then

investigated the matter and found that by laying an undergroud plastic pipeline, it was connected to the underground petroleum flow lines of the Petroleum Company by making a tab to the petroleum supply lines of the Petroleum Company. In this way, the petroleum oil was carried through the underground plastic pipeline to the godown belonging to the Railway.

9 Statement of Mohd. Sayeed Mohd. Safi Khan recorded after lodging the FIR shows that the Railways had rented out several godowns and this witness, who was working as *khalasi* was directed to work as watchman at those godown by the Railway. This witness found the work of laying down underground pipeline from closed godown No.20 belonging to the Railway. This witness in discharge of his duty objected to laying down the underground pipeline. He was threatened with life by warning that the work is carried at the instance of Saidul Bhai and Samiulla Bhai – co-accused in this crime. This watchman was instructed that if he further probes in the matter, he will be killed. This material, in my opinion, is sufficient to invoke provisions of Section 395 of IPC to the case diary of the crime in question. Section 390 defines the term 'robbery' and 'theft' can be 'robbery' if in order to committing of the theft, there is fear of instant death or of instant hurt. The offence become 'dacoity' when such an act is committed conjointly by five or more persons. This position takes care of the averments of the learned Advocate for the applicant that there was no further

investigation and the provision of Section 395 of IPC was invoked at the time of filing of the charge-sheet.

10 Truncated statement of a witness recorded on 27/05/2015 shows that when the witness objected to the work of digging for laying out the pipeline, the present applicant appeared on the scene and convinced the witness that the witness should not oppose the work of laying down the underground pipeline. The present applicant is stated to have communicated to the witness that the work is of the Municipal Corporation.

11 The Officer of the Petroleum Company ultimately found that the petroleum oil was routed to the Railway godown where it was stocked in barrels. Ultimately, the overflow caused detection of crime in question.

12 The confessional statement of the co-accused recorded under Section 18 of the MCOC Act indicates that the applicant was entrusted with a duty to manage local persons while laying down the underground pipeline for taking of the petroleum oil from supply mains of the Petroleum Company. The confessional statement further shows that the present applicant assisted the co-accused in fitting the electric motor for drawing petroleum oil from the supply main of the Petroleum Company. With this evidence, it cannot be said that the present applicant is not

concerned or has no complicity in the offence punishable under the provisions of MCOC Act. *Prima facie,* the charge-sheet indicates that the present applicant not only abetted the commission of the crime in question, but has also took part in the said crime.

13 No case for bail is made out. The application is, therefore, rejected.

14 Considering the fact that crime in question was registered in the year 2015 and as yet, as reported by the learned Advocate for the applicant, charge is not framed, the learned trial Court is directed to expedite the trial of the Special Case.

(A.M.BADAR J.)