IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.190 OF 2018

Saddam Israr Khan @ Firdous
(At present Arthur Road Central Prison) .. Applicant
Vs.
State of Maharashtra .. Respondent

WITH
CRIMINAL BAIL APPLICATION NO.1180 OF 2018

Juber Ahmed @ Papa Wasiulla Shaikh
(At present Mumbai Central Prison) .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Sudeep Pasbola a/w. Mr.Bhavesh Thakur & Mr.Karl Rustomkhan i/b. Mr.Rahul Arote, Advocate for the Applicant in Bail Application No.190 of 2018.

Mrs.Farhana Shah, Advocate for the Applicant in Bail Application No.1180 of 2018.

Mr.A.R. Kapadnis, APP for the Respondent – State.

Mr.Dinesh M. Desai, ACP, Deonar Division, Mumbai, Present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 30, 2018.

P.C. :

The applicants are seeking bail in connection with C.R.No.283 of 2017, registered with Shivaji Nagar Police Station, Mumbai. First Information Report was lodged on 25th July, 2017 and the offences were registered under Sections 387, 427, 143, 144, 147 and 149 of Indian Penal Code ("IPC", for short). Subsequently, the approval was obtained for application of the provisions of Section 3(i)(ii), 3(2)(4) of the Maharashtra Control of Organised Crime Act ("MCOC Act" for short). Subsequently, sanction was obtained for applying the said provisions and on completing the investigation, charge – sheet has been filed.

2 The prosecution case is that the complainant was entrusted with the task of detection of theft of electricity by the complainant company in the areas of Kurla to Vikhroli, Sakhinaka to Chembur and Mankhurd and to take appropriate action against such persons and upon detection, to submit his report to the complainant with the police and also with the concerned Regulatory Authorities. Since 2013, the complainant in order to prevent the theft of electricity at Shivaji Nagar and adjoining areas, has been experimenting several schemes for removal of illegal and unauthorized wires and ensure that they are not connected to the network of the electricity company. The company had installed Feeder Pillar (Theft poof) to prevent theft of electricity. On 6th July, 2017 at about 11:30 a.m., the

complainant along with his associates proceeded to Chikalwadi Road No.13, near Dumping Ground, Bainganwadi, Govandi, Mumbai, for installation of Feeder Piller. While carrying out the work, one unauthorized electricity distributor, namely, Mohammed Akhtar Abdul Qayum Khan, his brother Anwar @ Mannu Patel Qayum Khan, Ayaz Khan @ Juber Khan @ Chuva, Zuber @ Pappa and Ashraf Abrarali @ Bondu and four of their associates came there and objected to the installation of Feeder Pillars. All of them abused and manhandled the complainant and his colleagues. Crowd had gathered at the place of incident. At that time, Mohammed Akhtar Abdul Qayum Khan was armed with chopper and threatened the complainant and his colleagues and stated that if they install the Feeder Pillars, they would assault them and they would break their hands and legs and would also destroy the Feeder Pillar. Mohammed Akhtar Abdul Qayum Khan further stated that by installing such Feeder Pillar their business of theft of electricity would be in jeopardy and that if they wanted to install the Feeder Pillar, they have to pay him an amount of Rs.50,000/-, per month. It is further alleged that the complainant had intimated about the said incident to the police and on getting information that Mohammed Akhtar Abdul Qayum Khan would follow him. The accused again threatened the complainant and others. The people who had gathered at the scene of offence ran away apprehending danger. Mohammed Akhtar Abdul Qayum Khan and his associates went away towards the direction of new Bus Depot. Police had reached the spot. At that time the complainant and his associates started installing the Feeder Pillar and completed the work. On 7th July, 2017, the complainant and his associates went to Indiranagar, Chikalwadi, Road No.14, Govandi, Mumbai for installing Feeder Pillar, at that time Mohammed Akhtar Abdul Qayum Khan, his brother and others were found breaking the wires of Feeder Pillar with a cutter. Crowd had gathered at the place of incident. On seeing the complainant and his associates, the accused pointed out chopper at them and warned them of dire consequences and also threatened them that they would be killed. The people who had gathered at the scene of offence ran away. The complainant then informed the incident to the police. On 8th July, 2017, the complainant again visited the site along with his superiors and it was noticed that the Feeder Pillars were completely destroyed and two wires were unauthorizedly connected. It is stated that the Feeder Pillars were destroyed in order to extract unauthorized electricity of the company by illegal connection and theft of electricity. The lives of the residents of the area were also in danger due to the act committed by the accused. Accordingly, FIR was registered on 25th July, 2017.

3 During the course of investigation, statements of several witnesses were recorded. On completing investigation, charge – sheet has been filed against the applicants.

4 Learned counsel for the applicants submitted that the applicants appearing in both these applications submitted that the applicants are in custody from the date of arrest. The investigation is completed and the charge – sheet has been filed. It is submitted that the provisions of MCOC Act are not attracted in the present case. The applicants were not the members of organized crime syndicate which is requirement to invoke the provisions of the MCOC Act. It is submitted that the learned Judge while rejecting the application has failed to take into consideration that the applicants were not involved in any manner in the theft of electricity. It is the case of the prosecution that the co-accused is the leader of organized crime syndicate and there are more than one charge – sheet filed against him before the preceding period of 10 years. There is no *iota* of evidence that the applicants had any connection with the said

accused. It is submitted that the role of destroying the Feeder Pillar and threatening the complainant and associates is attributed to the co-accused and not the accused. It is submitted that the statements of employees of the complainant company were recorded which were verbatim and stereo type. The applicants' involvement was not shown with any manner by any strong evidence. It is submitted that the powers under the MCOC Act are misused by the police and although there is no evidence to substantiate the charge under the provisions of the MCOC Act, the charge–sheet has been filed against them under the provisions of the said Act. It is submitted that the provisions of the MCOC Act being drastic, the prosecution has required to establish the said charge by cogent evidence. Merely on the basis of the fact that some cases were registered against the main accused, the applicants cannot be called upon to face the said prosecution. The applicants were not involved in all those cases which were registered against accused no.3, who is alleged to be the gang leader. It is further submitted that while seeking approval for invoking the provisions of MCOC Act, the prosecution has not relied upon all those cases, and, therefore, the prosecution cannot now rely upon the antecedents and cases registered against the co-accused to establish the charge under the provisions of MCOC Act. It is submitted that there is no evidence to proceed against the applicants under the provisions of MCOC Act. The main charge of extortion and threat issued to the complainant and his colleagues were attributed to the co-accused. Learned counsel for the applicants relied upon the decision of the Supreme Court in the case of ***State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Anr.***[1] and ***Prasad Shrikant Purohit Vs. State of Maharashtra & Anr.***[2]

5 Per contra, learned APP submitted that there is sufficient evidence against the applicants. The presence of the applicants at the scene of offence is established from the evidence of the witnesses. The applicants have participated in the crime. It is submitted that the applicants are the members of crime syndicate, which is headed by accused no.3. The approval and sanction was obtained for applying the said provisions and on the basis of the cases registered against the applicants and the main accused, charge–sheet is filed. Statements of several witnesses show the complicity of the applicants in the said crime. It is further submitted that the applicant in Criminal Application No.190 of 2018, has criminal antecedents. Several cases are

1 (2007) 4 SCC 171
2 (2015) 7 SCC 440

registered against him. It is further submitted that as far as applicant in B.A.No.1180 of 2018, is concerned, there are several cases registered against him which are pending in the Court of law. However, at the same time, learned counsel for the applicants submitted that cases referred to in the affidavit in reply filed by the prosecution were not part of the proceedings and while obtaining approval, there was no reference of the said cases. It is also submitted that the applicants are not accused in the cases which were registered against accused no.3.

6 I have perused the charge – sheet which has been annexed to this application. The incident, which is relied on by the prosecution wherein the FIR was registered on 25th July, 2017, is in relation to the threats issued to the complainant and his associates and the damage caused to the Feeder Pillar of electricity. The prosecution, therefore, proceeded on the basis that the accused had threatened the complainant and his associates while they were installing the Feeder Pillar. It is also alleged that the main accused had demanded Rs.50,000/-, as protection money as on account of the alleged installation of Feeder Pillar, loss caused to him. The demand is not attributed to the applicants. The prosecution thereafter proceeded on the basis

that the case for invoking the provisions of MCOC are made out against the applicants and submitted the proposal for obtaining approval. On perusal of the approval and the sanction order, it is apparent that the cases which are referred to by the prosecution in the affidavit in reply, were not reflected in the said documents. It is also pertinent to note that the applicants are not the co-accused in relation to the offences of theft of electricity with the main accused. To invoke the provisions of MCOC Act, there has evidence to indicate that the accused are members of organized crime syndicate. Considering the evidence collected by the prosecution during the course of investigation, *prima facie,* application of the provisions of MCOC Act, is debatable. In accordance with the decision of the Supreme Court in the case of ***Ranjeetsingh Sharma*** and the decision relied upon by the counsel for the applicants, *prima facie*, the case for grant of bail is made out. Applicants are in custody for more than one year. Considering the aforesaid circumstances, and the nature of evidence and in the light of the observations made hereinabove, applicants are entitled to be released on bail.

7 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Bail Application Nos.190 of 2018 and 1180 of 2018, are allowed;

(ii) Applicant in both the applications are directed to be released on bail in connection with C.R.No.283 of 2017, registered with Shivaji Nagar Police Station, Mumbai, which is subject matter of MCOC Special Case No.13 of 2017, pending in the Sessions Court, Mumbai, on their furnishing P.R. Bond in the sum of Rs.30,000/-, each, with one or more sureties in the like amount;

(iii) Applicants shall attend Deonar Police Station, Mumbai, on first Saturday of the month between 10:00 a.m. to 12:00 noon, till conclusion of the trial;

(iv) Applicants shall not tamper the evidence and also attend the trial Court regularly during the date of hearing, unless exempted by the Court ;

(v) Bail Application Nos.190 of 2018 and 1180 of 2018, stand disposed of.

(**PRAKASH D. NAIK, J.)**