IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 293 OF 2018

Varsha Shankarrao Phadke. .. Applicant.

V/s.

State of Maharashtra. .. Respondent.

Mr. A.P. Mundargi, Sr. Counsel I/b. Mr. Mangesh M. Deshmukh, advocate for applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

RESERVED ON AUGUST 6, 2018.
PRONOUNCED ON AUGUST 31, 2018

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1908 seeking enlargement on bail in Special MCOCA Case No. 21 of 2016. The applicant herein is arrested on 4/12/2016. The applicant herein is an advocate by profession. The investigation is completed and charge-sheet is filed.

3 On 12/12/2015 Crime No. 477 of 2015 is registered at Kondwa Police Station, Pune against the original accused persons namely Amol

Baswant, Bapu Nair, Deepak Kadam etc. for the offence punishable under section 307, 387, 447, 504, 506(i) read with section 34 of the Indian Penal Code. The accused were arrested. In the course of investigation, the provisions of Maharashtra Control of Organised Crime Act were invoked on 26th December, 2015. The present applicant was not named in the FIR. She was representing the accused persons as she had always appeared for accused Bapu Nair. In the course of investigation, mother and wife of Bapu Nair were arraigned as accused persons. The applicant herein was representing mother and wife of the accused Bapu Nair.

4 In the FIR dated 12/12/2015, first informant Nilesh Bothra had alleged that the accused persons had been to Survey No. 66 in Kondwa Budruk on the plot which was purportedly purchased by Nilesh Bothra in a car bearing registration No. MH 12 MD 3663 and in a Innova car. The said vehicles were seized in Crime No. 477 of 2015. The applicant who was representing the mother and wife of Bapu Nair had filed application on their behalf seeking return of the property. That the said application filed for return of property was rejected.

5 Being aggrieved by the said order, the applicant herein had filed criminal Application No. 455 of 2016 seeking return of the vehicle of

furnishing supratnama.

6 According to the prosecution, Rani Nair and Jyoti Nair had absconded. A proclamation was issued against them under section 82 of the Code of Criminal Procedure, 1973. The said proclamation was challenged before this Court by way of filing Criminal Application No. 986 of 2016. The Hon'ble Division Bench of this Court had stayed execution and implementation of the proclamation. It was made clear by the Division Bench that stay to the implementation and operation of the proclamation shall not be construed as a stay to the arrest of Rani Nair and Jyoti Nair.

7 On 21/11/2016 when the police had apprehended Jyoti Nair and Rani Nair, the applicant herein had represented them. It is alleged that the applicant had demonstrated that arrest of accused has been stayed by the Division Bench. Similar application was made before the learned JMFC, Cantonment Court, Pune. According to the prosecution, the applicant had also assured the investigating agency that Rani Nair and Jyoti Nair would appear before the Judicial Magistrate First Class on the next day i.e. on 22/11/2016. The accused Rani Nair and Jyoti Nair had chosen not to appear before the Court. According to the prosecution, the applicant herein was not only an advocate representing Bapu Nair and his wife and mother, but she had intimate relations with

the accused Bapu Nair, who happens to be history-sheeter. It is alleged that the applicant had also materially benefited from the crime proceeds of Bapu Nair. It is also alleged that she had aided and abetted unlawfully for release of the wife and mother of Bapu Nair. Another allegation is that she had forged the signature of Bapu Nair, his family members and other accused persons who were members of the syndicate before the Notary.

8 The applicant herein was produced on 5/12/2016 before the Special Court. On 6/12/2016 investigating agency had sought police custody of the applicant. It was demonstrated by the applicant that section 3(3) of the Maharashtra Control of Organised Crime Act could not have been applied to the applicant. Moreover, it was also demonstrated that the principal offences were registered against Bapu Nair, Baswant and others in the year 2015 and that although she had represented the accused, she cannot be termed as a member of the organised crime syndicate. Upon considering the papers of investigation and the submissions advanced by the prosecution and the accused, the learned Special Court had refused to grant police custody and had relegated the accused to judicial custody.

9 Being aggrieved by the order of the Special Court refusing to grant police custody, the prosecution had filed Criminal Appeal No. 23 of

2017 before this Court. At that stage, learned APP had made a statement before the Court that except the statements of seven witnesses, recorded subsequent to passing of the impugned order, all relevant material was placed before the learned Special Court for consideration of the application praying for police custody. Similarly, transcript of the conversation between present applicant and Bapu Nair was not placed on record but the compact disc containing conversation was placed before the Special Court while passing impugned order. However, by order dated 10/1/2017, the said appeal was allowed by this Court (Coram: A.M. Badar, J). The order passed by learned Special Judge, MCOCA Court, Pune rejecting prayer for police custody remand was quashed and set aside. The application for police custody remand was allowed by this Court, initially for a period of 7 days and thereafter, investigating agency was directed to file an appropriate application seeking further remand. This Hon'ble Court had made it clear that the observations were prima facie in nature and shall not affect the merits of the case. The applicant is in custody since 4/12/2016. At the outset, it is seen that the applicant was representing Bapu Nair and others as an advocate. The applicant was in police custody remand from 13/1/2017 to 27/1/2017 and is in judicial custody from 27/1/2017.

10 According to the prosecution, the allegations against the

present applicant are as follows :

(i) The applicant was in an illicit relationship with Bapu Nair.

(ii) The accused Bapu Nair was absconding from 12/12/2015 to 8/5/2016. During that period, the applicant herein was in contact with the accused. That cell phones of accused Bapu Nair and the present applicant were kept under vigilance from 4/5/2016 to 8/5/2016 and on the basis of the same, it had transpired that the accused Bapu Nair was at Noida, New Delhi. He was arrested.

(iii) That the applicant was using the cell phone which was registered in the name of Anand Sopan Jarad. His statement was recorded and he has disclosed that he happens to be a relative of the applicant and that she had demanded his SIM card and he had obliged since he happens to be a relative.

(iv) The original accused Bapu Nair had amassed movable and immovable properties from the crime proceeds and had transferred some of the properties in the name of his wife and mother.

(v) It is also alleged that the applicant was also the beneficiary of some properties of Bapu Nair, which he had acquired illegally.

(vi) The applicant herein had represented the mother and wife of Bapu Nair and had misrepresented to the investigating agency in respect of the orders passed by this Court.

(vii) It is also alleged that the applicant had forged signature of the accused before the notary.

(viii) Investigating agency had recorded the confessional statements of the co-accused and other witnesses indicating that in the absence of principal accused Bapu Nair, present applicant was managing the affairs of the syndicate.

(ix) That 23 persons had given an application against the present applicant regarding the manner in which she was aiding the principal accused.

11 The learned senior Counsel appearing for the applicant has urged before this Court that the applicant was representing the accused persons as an advocate. By way of professional obligations, she was bound to protect the interests of the accused persons. That in fact, she had not misrepresented the orders of this Court. There was lack of communication. That the procedure for issuing proclamation was not followed and therefore, execution and implementation of the order passed under section 82 of the Code of Criminal Procedure, 1973 was stayed by this Court. Since the order was not uploaded, the applicant had disclosed that the order is stayed. However, the conduct of the advocate could have been enquired into by the Court under section 340 of the Code of Criminal Procedure, 1973 or under section 2(c)(iii) of the Contempt of Courts Act for hampering administration of justice by misrepresentation of orders. In any case, that ground was considered while allowing criminal appeal and she was taken in police custody by the orders by this Court dated 10/1/2017 Criminal Appeal No. 23/2017. The applicant had received professional fees and gifts from accused Bapu Nair which is being termed as material benefits from the crime proceeds of the organised crime syndicate. As far as illicit relations with Bapu Nair is concerned, it would be her personal affair, which cannot be looked into as an offence punishable under the provisions of

Maharashtra Control of Organised Crime Act. The confessional statements are in the nature of the fact that whenever she visited office, she used to spend long hours in the company of Bapu Nair in his cabin. It is rightly submitted that it can be seen as a conference between the advocate and a client.

12 There is no allegation that the applicant had personally threatened any person or extorted money or has indulged into any continuing unlawful activity either as a member of the Organised Crime Syndicate or on behalf of such Syndicate by use of violence or threat or other unlawful means with the objective of gaining pecuniary benefits or gaining economic advantage for herself. It appears that she was being prosecuted for espousing the cause of the principal accused. Therefore, this Court would have no hesitation to record a satisfaction as contemplated under section 21 sub-clause (4) of the Maharashtra Control of Organised Crime Act that she is not likely to commit any offence while on bail. She has no criminal antecedents. She is not even being prosecuted by the Bar Council for any misconduct and her personal relations with an accused can in no manner be termed as an offence by any stretch of imagination.

13 Be that as it may. The applicant herein cannot be denied bail

only because she represented a history-sheeter or habitual offender. At the cost of reiteration, her relations with the principal accused cannot be considered to attract the provisions of Maharashtra Control of Organised Crime Act. She has been in custody for more than 2 years. The charge-sheet is filed against her. No case is made out by the prosecution for further incarceration of the applicant. It is in these circumstances that the applicant deserves to be enlarged on bail.

14 The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The same shall not be taken into consideration for discharge application or at the time of trial.

15 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 1,00,000/- with solvent sureties in the like amount.

(iii) The applicant shall not tamper with the evidence.

16 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Talwalkar

Aruna Sandeep Talwalkar

Digitally signed by Aruna Sandeep Talwalkar
Date: 2018.08.31 15:08:55 +0530