

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.571 OF 2018

Laxman Subhash Chavan	Applicant
versus	
The Senior Inspector of Police and another	Respondents

WITH
CRIMINAL BAIL APPLICATION NO.945 OF 2018

Sanjaykumar @ Munna Babu Bula	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL BAIL APPLICATION NO.1120 OF 2018

Puru @ Bhuta Panduchinna Rathod	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Balwant Salunkhe for applicant in BA No.571 of 2018.
Mr.Rahul Arote for applicant in BA No.945 of 2018.
Mr.Nitin Sejpai for applicant in BA No.1120 of 2018.
Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th October 2018

PC :

1. The applicants in all these applications are seeking bail in connection with CR No.I-07 of 2017 registered with Kongaon Police Station, for offences under Sections 395, 365, 201, 120B, 411, 412 of Indian Penal Code and Sections 3(1)(II), 3(2) and 3(4) of Maharashtra Control for Organized Crimes Act, 1999. The applicant

in Bail Application No.571 of 2018 was arrested on 28-2-2017. The applicant in Bail Application No.945 of 2018 was arrested on 8-3-2017 and applicant in Bail Application No.1120 of 2018 was arrested on 13-2-2018. The FIR was registered on 10-1-2017. On completing investigation charge sheet has been filed.

2. The prosecution case is that the complainant is resident of Kalyan, District Thane. He is employee of company viz Proconnect Supply Solutions Limited as Assistant General Manager. The said company is having its godown at Gala Nos.1 to 10, Building No.E/6, behind Cipla Company, Pimpalas Road, Pimplas Gaon, Tal.Bhiwandi wherein electronic goods of various companies are stored. About 50 persons are working in the said godown. Several security guards are deputed for security in the said godown. On 10-1-2017 the complainant received telephonic call from the security guard informing him that theft has taken place in the godown of the company. The complainant immediately rushed to the spot. On reaching the godown it was revealed that shutter no.11 of the godown was broken and the accused had committed theft of mobile phones, I-Pods, Chargers and USB cables valued at Rs.42,19,490/-. The complainant thereafter lodged complaint in respect of said theft with Kongaon Police Station against unknown persons. The offence as stated hereinabove was registered. The spot panchanama was recorded. Subsequently the accused were arrested. Approval was sought for application of provisions of MCOC Act in accordance with Section 23(1) of the said Act. Sanction was accorded for application of provisions of MCOC Act. The applicants were remanded to custody from time to time. On completing investigation charge sheet has been filed.

3. Learned counsel representing the accused submitted that the provisions of MCOC Act are not attracted in the present case. There is no evidence to show that the applicant were the members of organized crime syndicate. The prosecution is relying upon the confession of one of the accused Santosh Chavan recorded u/s 18 of MCOC Act. It is a weak piece of evidence and requires corroboration. Considering the nature of evidence against applicants, embargo enunciated u/s 21(4) of MCOC Act is not attracted against applicants.

4. Learned counsel for applicant in BA NO.571 of 2018 submitted that the said applicant is in custody from the date of arrest. He has not been identified by any eye witness. There is no recovery at his instance. There is no evidence to establish that he is member of organized crime syndicate. In the absence of identification, the applicant cannot be subjected to further detention. In the absence of cogent evidence in crime in which he is arrested, on account of invocation of provisions of MCOC Act, the applicant cannot be subjected to further custody.

Learned counsel for applicant in BA No.945 of 2018 submitted that there is no evidence to establish his presence at the scene of offence. No witness has indicated his presence. What is used against him is the confessional statement of the co-accused. There is no corroboration to the said statement. There is no identification parade showing his involvement in the crime. There is no recovery from him.

Learned counsel for applicant in BA No.1120 of 2018 submitted that the applicant is in custody from the date of arrest. The provisions of MCOC Act are not applicable to him. Although he has been identified, for want of evidence to apply the provisions of MCOC Act, he be released on bail.

5. Learned APP submitted that the applicants are members of organized crime syndicate. There is evidence to show the involvement in the crime. The confessional statement of the co-accused indicts the applicants. There are antecedents against them. It is submitted that the applicant in BA No.571 of 2018 was also involved in the crimes. There are six cases pending against him including the present case. Considering the fact that he is history sheeter and evidence collected by the investigating machinery, provisions of MCOC Act were invoked in that case. It is further submitted that the said applicant was involved in a case where police authorities from Karnataka were attacked and offence u/s 307 of IPC is registered against him in Karnataka State. Learned counsel for applicant, however, submitted that he was granted bail by High Court of Karnataka. Learned APP further submitted that the applicant in BA No.945 of 2018 is also having criminal antecedents. One case is pending against him. The advocate for applicant, however, submits that the said case was registered after registration of present crime and he is on bail in the said case. It is submitted that the statement of witness recorded during the investigation indicate that the said applicant was trying to sell the cell phone to the witness. It is submitted that he is member of organized crime syndicate. It is further submitted that the applicant in BA No.1120 of 2018 is involved in the crime. The confessional statement of the co-

accused indicts him. The said applicant has been identified in the test identification parade. There is recovery at his instance. Learned counsel for applicant submits that as far as said applicant is concerned, there is recovery of cell phones worth Rs.2.40 lakhs.

6. I have perused the charge sheet. The applicants are in custody from the date of arrest. The prosecution is relying on the confessional statement of accused no.9 recorded u/s 18 of MCOC Act. During the course of investigation the property worth Rs.42.19 lakh has been recovered. It is noted that as far as applicants in BA Nos.571 of 2018 and 945 of 2018 are concerned, they are not identified in the identification parade. There is no evidence to show that they are in the crime. There is no recovery at their instance. As far as applicant in BA No.571 of 2018 is concerned, there are antecedents, however, he is on bail in the said case. The applicant in BA No.945 of 2018 is having one criminal antecedent which was registered after registration of present charge by the same police station. It is submitted that the said FIR was registered against unknown persons in which said applicant was shown as an accused after his arrest in the present case. Considering the nature of evidence against the applicants of BA Nos.571 of 2018 and 945 of 2018, the rigors of Section 21(4) of MCOC Act would not be attracted and in the light of the observations of Supreme Court in the case of Ranjit Singh Sharma Vs. State of Maharashtra (2005-ALL MR {Cri}-1538 {SC}), they are entitled for bail. However, as far as applicant in BA No.1120 of 2018 is concerned, there is evidence of identification and there is also recovery from him. In the circumstances bail cannot be granted to the said applicant. He was identified in the test identification parade on 22-3-2017. During the

search at his residence four I-phones worth Rs.2.40 lakh were seized at his instance. The prosecution is also relying on the statement of witness Sagar Pawar in respect to role played by him in the crime. In the circumstances, the applicant in BA No.1120 of 2016 is not entitled for bail.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.571 of 2018 and Criminal Bail Application No.945 of 2018 are allowed and disposed off;
- (ii) Criminal Bail Application No.1120 of 2018 is rejected;
- (iii) The applicants in Criminal Bail Application Nos.571 of 2018 and 945 of 2018 be released on bail in connection with CR No.I-07 of 2017 registered with Kongaon Police Station, on their furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iv) The applicants in Bail Application Nos.571 of 2018 and 945 of 2018 are directed to report Kongaon Police Station once in a month on every first Saturday between 10 am and 12 noon till conclusion of trial;
- (v) The applicants in Bail Application Nos.571 of 2018 and 945 of 2018 shall also attend the Trial Court regularly on dates of hearing of the case, unless exempted by the said Court for some reason.

(PRAKASH D. NAIK, J.)