IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1175 OF 2017

Tayyab Mansoor Shaikh, Age 37 years,
Occ.Service, R/o.Building No.21/A,
Lallu Bhai Compound, Room No.711,
Govandi, Mumbai-400 042.
(Presently lodged at Taloja Jail) Applicant
versus
The State of Maharashtra Respondent

Mr.Shantanu R. Phanse for applicant.
Mr.A.R.Kapadnis, APP, for State.
Mr.Walanke, ACP, Wadala Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th November 2018

PC :

1. The applicant is seeking bail in connection with CR No.50 of 2015 registered with Sewree Police Station for offences punishable under Sections 379, 461, 427 and 285 of Indian Penal Code. Subsequently the provisions of Maharashtra Control of Organized Crime Act,1999 (`MCOC Act') were invoked. The applicant was arrested on 3rd August 2016.

2. The prosecution case is that the complainant is working as senior manager in Bharat Petroleum Corporation Limited (`BPCL'). On 12th May 2015 the police attached to Byculla Police Station had intimated the BPCL that there is an oil leakage behind Star Talkies, Dockyard, Mumbai and that they should verify whether the pipeline belongs to BPCL company. The staff of BPCL then reached the spot

and in order to find out the source of oil leakage, the complainant instructed to dig a hole. After digging hole it was noticed that one inch plastic pipe passing towards main pipeline of the company was inserted. It was noticed that it was a case of pilfering the base oil of BPCL. Hence the FIR was lodged with the police station for the aforesaid offences as well as for the offence under Section 15(2) of Petroleum and Mineral Pipeline Act, 1962 read with Section 3 of Prevention of Damage to Government Property Act, 1984. During the course of investigation accused were arrested. The applicant was granted bail by the Court of learned Magistrate, However, since the provisions of MCOC Act were invoked, the applicant was re-arrested and since then he is in custody. On completing the investigation charge sheet is filed.

3. Learned counsel for applicant submitted that there is no substantive evidence against the applicant. The provisions of MCOC Act are not attributed to the applicant. He was granted bail in respect to the offences registered vide FIR lodged on 12th May 2015. The applicant is not connected with the alleged crime syndicate. There is no other case registered against the matter. He has not participated in the crime with co-accused in any other case, who are involved in this case. It is further submitted that there is no cogent evidence to show the involvement of the applicant in the crime. The prosecution has relied upon the confessional statement of the co-accused to show the involvement of applicant as a plumber, who had fixed the motor to the pipeline which was used for pilfering the base oil of company. It is submitted that the confessional statement of the co-accused Samiullah Baig was retracted by him on 28th April 2016. The memorandum statement relied upon by the prosecution showing

the place of incident wherein alleged motor was fixed is not admissible in evidence. There is no recovery of any nature from the applicant and there is no other evidence to show his involvement in the crime.

4. Learned APP submitted that the applicant was involved in serious crime of pilfering the base oil. The co-accused are involved in several cases and they are members of crime syndicate who are continuously committing crimes and indulging in continued unlawful activities. The confessional statement of the co-accused has shown involvement of the applicant. It is further submitted that the investigating officer has also collected evidence in the nature of memorandum statement showing the place where the alleged motor was fixed. Learned APP relied upon affidavit filed by Commissioner of police wherein antecedents of other accused being involved in several cases are reflected. It is submitted that the applicant is a member of a gang and had indulged into the act of pilfering the base oil with co-accused.

5. I have perused the charge sheet which is annexed to this application. It is pertinent to note that the offence u/s 379 of IPC and other offences were registered on 12th May 2015. The applicant was granted bail. The prosecution was relying upon the confessional statement of the co-accused recorded u/s 18 of MCOC Act wherein purportedly role was attributed to the applicant as a person who has assisted the co-accused in fixing the motor. The applicant is allegedly the plumber. However, it is pertinent to note that except the confessional statement and the alleged memorandum statement, there is no cogent evidence to establish that the applicant is a

member of organized crime syndicate. As stated above, the confessional statement was retracted by the co-accused. The applicant was granted bail earlier, however, he was re-arrested on 3rd August 2016 and since then the applicant is in custody for more than two years. There are no reported antecedents against the applicant. In the light of nature of evidence relied upon by the prosecution, the fetters imposed vide Section 4(4) of MCOC Act would not preclude the court from granting bail to the applicant. In the light of aforesaid circumstances, case for grant of bail is made out.

6. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.1175 of 2017 is allowed and disposed off;

(ii) The applicant is directed to be released on bail in connection with MCOC Special Case No.10 of 2016 registered with Sewree Police Station, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report Sewree Police Station once in a month on every first Saturday between 10 am and 12 noon till conclusion of trial;

(iv) The applicant shall attend the Trial Court regularly on the dates of hearing, unless exempted by the Special Court;

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

(PRAKASH D. NAIK, J.)

MST