Vidya Amin.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1045 OF 2018
IN
CRIMINAL APPEAL No. 838 OF 2018

Rajendra Rohidas Chavan … Applicant
vs.
The State of Maharashtra … Respondent

Mr. Taraq Sayed, Advocate for the applicant.
Ms. M.M. Deshmukh, APP for the respondent/State.

CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: AUGUST 28, 2018

P.C. :

1. This Application is moved by the applicant-accused for bail, as he is convicted to suffer rigorous imprisonment for 10 years for the offences punishable under section 3(2) of Maharashtra Control of Organized Crime Act, 1999 (M.C.O.C.) by the judgment and order dated 30th May, 2018 passed by the Additional Sessions Judge & Special Judge under MCOC Act, Greater Mumbai in MCOC Special Case No. 10 of 2010. The applicant/accused along with co-accused was charged initially for the offences under sections 120B, 302 read with 120-B, 452 r/w. 120B of Indian Penal Code, under section 25(1-A) r/w. 7, 25(1-B) r/w. 3 and 27 of the Arms Act and under sections 3(1)(i), 3(2), 3(4) and 4 of the MCOC

Act. The co-accused and present applicant-accused were prosecuted for the murder of Farhid Tanasha, which was committed on 2nd June, 2010.

2. The learned counsel for the applicant/accused has submitted that the applicant/accused was arrested on 3rd July, 2010 and since then he is in custody. The learned counsel submitted that the applicant/accused is acquitted from the offence of murder under section 302, under section 120B of Indian Penal Code and under relevant sections of the Arms Act. He is punished only under sections 3(2) of MCOC Act. The learned counsel also prays bail on the ground of parity, as other co-accused nos. 7 and 9 were granted bail by this Court by order dated 6th August, 2018 in Criminal Application no. 910 of 2018 in Criminal Appeal No. 745 of 2018 and in Criminal Application No. 978 of 2018 in Criminal Appeal No. 804 of 2018.

3. Learned APP while opposing this Bail Application has submitted that the case of this applicant/accused no. 10 is different from the case of accused nos. 7 and 9. Accused nos. 7 and 9 though were punished under sections 3(2) of MCOC Act like the present applicant, there is more evidence against this

applicant/accused, as PW-44-Branch Manager of State Bank of India has stated about the monetary transaction taken place through this applicant/accused and the money was transferred from his account to the account of wife of accused no. 1 who is the principal accused. She has further submitted that the police have intercepted the conversation between the applicant/accused no. 10 and absconding accused Vijay Shetty, who is leader of Organized Crime Syndicate and associate of notorious gangster Bharat Nepali. Learned APP has submitted that there is evidence of PW-39, PW-40 and PW-41, who have stated that they are relatives of accused no. 1 and money was transferred from the account of present applicant-accused to their respective accounts. She submitted that in the open Court at the time of trial, threats were given by some of the accused to PW-45 and the learned trial Judge has recorded the conduct of those accused and protection was given to PW-45.

4. Considered the submissions. Perused the relevant papers, evidence and the impugned judgment. The applicant/accused was prosecuted for the offence under section 302, 120B, under the Arms Act and other sections of MCOC Act.

He is convicted only under section 3(2) of MCOC Act and is acquitted from all other offences. The applicant/accused is arrested on 3rd July, 2010 and since then he is in the jail. Thus, the applicant-accused has completed 8½ years, out of his 10 years sentence. We have considered the submissions of learned APP on the point of monetary transaction generated through this applicant/accused. However, it may be part of the working of Organized Crime and for which he is convicted for 10 years under section 3(2) of MCOC A ct. The condition of staying away of the territorial jurisdiction was imposed by the trial Judge till filing of the charge-sheet and charge sheet is already filed.

5. We have noted the submissions of learned APP on the point of threats given to PW-45 and we are of the view that this cannot be considered as circumstance against the accused while considering this Bail Application, as this is altogether a different incident. So also there is no specific mention that applicant-accused no. 10 was the one who gave threats to PW-45. Moreover, by order dated 6th August, 2018, other two accused, i.e., accused nos. 7 and 9 were granted bail, who are convicted under section 3(2) of MCOC Act. Thus, on the ground of parity also, we

are of the opinion that the Application of applicant-accused for bail is to be allowed with following order:

ORDER

a) The applicant is directed to be released on bail on his furnishing fresh bail bonds of Rs.50,000/- with one or more solvent securities in the like amount to the satisfaction of the learned Special Judge in MCOCA Special Case No. 10 of 2010 if not required in any other case;

b) The applicant shall furnish his permanent as well as temporary address, if any, as well as his contact numbers. The applicant shall not change his address without prior permission of the Court;

c) The applicant is directed to report to the Crime Branch on first Monday of every month until further orders;

d) The applicant shall not leave the country without prior permission of the Court and, in the event he has been issued passport, he shall deposit the same with the Crime Branch.

6. Criminal Application is disposed of.

(MRIDULA BHATKAR, J.) **(S.S. SHINDE, J.)**

Vidya Suresh Amin
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Date: 2018.08.30 17:59:17 +0530