

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2981 OF 2017

Devdatta Tulshiram Ghatode/Ghatole Applicant

Vs.

The State of Maharashtra Respondent

ALONGWITH

BAIL APPLICATION NO.2930 OF 2017

Kiran Dnyaneshwar Pelmahale Applicant

Vs.

The State of Maharashtra Respondent

Mr. Chetan Subhash Damre for the Applicant in BA 2981 of 2017.

Mr. Vikas B. Shivarkar for the Applicant in ABA No.2930 of 2017.

Ms. Veera Shinde, APP for the State.

Mr. Vijay J. Pawar, PSI, Ambad Police Station, Nashik.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 25th July, 2018

P.C.:

1 Heard the learned counsel for the applicants and the
learned APP.

2 These are the applications under Section 439 Code of Criminal Procedure. The applicants herein are charge-sheeted for the offences punishable under Sections 395, 307, 386, 506(2), 323, 427, 504 of the Indian Penal Code, Section 3 read with 25 of Indian Arms Act, 135 of Maharashtra Police Act and 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crimes Act, 1999 (“MCOC Act”).

3 As far as Criminal Bail Application No. 2981 of 2017 is concerned, this is a subsequent application as the earlier application was withdrawn.

4 It is the case of the prosecution that on 1st June, 2016, a 19 years old boy Shubham Vijay Bhavsar lodged a report at the police station alleging therein that he happens to be a fruit vendor. On 31st May 2016 at about 3.00 to 3.30 pm., he was going to his house and while he was crossing Rajababu wine shop, suddenly he had heard some voice of acquaintance as that of the person residing in his area. There he had seen Shakir Nasir Pathan alias Mota Pathan,

Shahidya Shaikh alias Dahashat, Ganesh Suresh Wagh alias Ganya Kavlya, Mukesh Rajput alias Mukya Rajput and 4-5 other boys of “Tipper Gang”. Those boys had abused him and had asked him protection money. They had demanded Rs.5,00,000/-. The boy had helplessly told them that he does not have that much money. Thereafter they said that they were fully aware that he had the money and threatened him of elimination of his parents, if he failed to pay. The boy still negated their demand. Immediately he was assaulted with fists and kicks blows. One of them had drawn a sword and was about to assault him and at that juncture, the owner of Rajababu wine shop intervened and had rescued the victim. Despite that, they had stolen Rs.7,300/- from his pocket. He was taken to the hospital.

5 Since the first informant had stated that the principal accused were accompanied by 4-5 boys on 1st June 2016 i.e. the day when the offence was registered, the present applicants were arrested and taken into the custody. It was not the case of the first

informant that they were unknown boys and therefore the test identification parade was not necessary in the course of investigation. On 2nd June, 2016, the supplementary statement of the first informant was recorded and he had specifically named the present applicants and one Sonya Pawar.

6 In the course of investigation, a proposal was filed by the police for adding the provisions of MCOC Act against the applicants and the said proposal was accepted and prior approval under Section 23(1)(a) of MCOC Act was passed on 9th June 2016.

7 Both the learned counsel for the applicants have submitted that in fact the present applicants have not been charge-sheeted alongwith the principal accused Ganesh alias Ganya Kavlya or Shakir Pathan in the earlier case.

8 Mr. Shivarkar, the learned counsel for the applicant in Criminal Bail Application No.2930 of 2017 has submitted that the

applicant was not charge-sheeted with Ganesh alias Ganya Kavlya nor with Shakir Pathan. That he is 19 years old and has been in custody since 1st June 2016 and therefore he is entitled to be enlarged on bail.

9 Learned counsel for the applicant has vehemently submitted that merely being charge-sheeted earlier would not attract the provisions of MCOCA. As per the definition of Section 2(d), the applicant was not indulging into continuing unlawful activity and therefore the sanction accorded under the provisions of MCOCA would not be applicable. In light of this, the learned APP has placed on record certain statements of the witnesses recorded under Section 164 of Cr.P.C., wherein it is shown that although the applicants were not charge-sheeted alongwith Ganesh alias Ganya Kavlya, they happen to be in association with him and working on his behalf for a long time. One of the witnesses has specifically given the incident dated 29th February 2016 i.e. just 2 days before the present case, wherein he had received a telephonic threat from Ganesh alias

Ganya Kavlya and on 29th March 2016, there was a demand of Rs.15,00,000/- for releasing his car and the driver. It was a ransom amount, which could be punishable under Section 364-A of Cr.P.C. The witness then specifically stated that he did not wish to put the life of his driver into peril and therefore he finally agreed to pay Rs.2,50,000/- to Ganesh alias Ganya Kavlya and his associates. That on 29th March 2016, he had been to Ranapratap Chowk, CIDCO, Nashik to handover Rs.2,50,000/- and at that time the present applicants, were alongwith Ganesh alias Ganya Kavlya and thereafter they had left in Maruti car. The witness has specifically stated that he knew the activities of “Tipper Gang” and more particularly that Shakir Nasir Pathan, Ganesh alias Ganya Kavlya, Kiran Pelmahale, Devdatta Ghatole and all are members of the same gang. He knew the boys since his mother was acquainted with their mother. He had not reported the incident to the police due to security of his family as he was scared of “Tipper Gang”. There is another witness, who has further stated that he was extorted by Shakir Pathan and after they received Rs.2,00,000/-, they had stopped assaulting him i.e. Shakir

Pathan, Mukesh Rajput, Shahidya Shaikh alias Dahashat and Ajinkya. The statements of other witnesses are also recorded under Section 164 of Cr.P.C., where they have specifically shown the close association of the present applicant alongwith Ganesh alias Ganya, Shakir Pathan and others. One of the incident is of the year 2012 and the another incident is of 31st May 2015.

10 Learned counsel, Mr. Shivarkar vehemently submits that the applicant is hardly 19 years old and therefore a lenient view be taken in respect of the present applicant.

11 Taking into consideration the statements of the witnesses, who have shown a close association of the applicant with the principal accused and the fact that just two days before the present case, he was in the company of the principal accused, it can be said that he was acting on behalf or in association with the principal accused and hence he would not be entitled to bail.

12 Both the counsel have submitted that although the complainant was knowing their names, their names are not reflected in the F.I.R. At this stage, the learned APP submits that the state of the mind of the victim at the relevant point of time has to be taken into consideration and the first information report cannot be treated as an Encyclopedia. It is also submitted that there has been no delay in recording the supplementary statement. Moreover the supplementary statement also shows that there was a demand by the said gang to the father of the victim on the same day.

13 As far as the applicant-Devdatta Tulshiram Ghatode/Ghatole in Bail Application No. 2981 of 2017 is concerned, the learned counsel vehemently submits that the applicant has been charge-sheeted with Ganesh alias Ganya Kavlya only in one case and on the date of registration of the present offence, there were no two charge-sheets against the applicant alongwith the principal accused and therefore the provisions of MCOC Act would not be applicable.

In view of the statements of the witnesses and the fact that he was also charge-sheeted with the principal accused, the applicant would not be entitled to bail, as it would be difficult to record the satisfaction for grant of bail as contemplated under Section 21, Sub-clause 9 of the MCOC Act. The rights of the accused have to be weighed against the security and safety of the society and therefore the applicants do not deserve to be enlarged on bail. The applications being sans-merits stand rejected.

14 However, it is made clear that the observations are only restricted to an application under Section 439 of Cr.P.C. and the learned Special Judge would not be influenced by the same at the time of trial.

15 This Court is informed that the trial has been expedited. It is reiterated that the trial is expedited in view of the age of the applicants.

(Smt. Sadhana S. Jadhav, J)