

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

CRIMINAL BAIL APPLICATION NO. 392 OF 2019

Sanjay Baban Dhamane

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Aniket Nikam I/b Mr. Aashish Satpute, Advocate for the Applicant.
- Mr. Prashant Jadhav, APP for the State.
- Mr. Sunil Sawant, PSI, Crime Branch, Navi Mumbai.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th JULY, 2019

P.C. :

1. The applicant is seeking his bail in connection with CR No. I-6/17 registered at Khandeshwar Police Station, Navi Mumbai under Sections 395, 341, 342, 412 and 120-B of the IPC and under Sections 3 (1)(ii), 3 (2) and 3(4) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act). The FIR is lodged on 8th January 2017 by one Pramodkumar Thakur.

2. The informant was a manager of M/s Reliable Carrier

Private Limited, which was a transport company. On 4th January 2017 at around 5.30 p.m. about 640 boxes of Cigarettes were loaded in company's truck. The driver was one Sunil Yadav. He started from the company's office at MIDC Ranjangaon and was traveling towards Ambarnath. On the next day i.e. on 5th January 2017 the company lost the track of the truck on their GPS system. The driver's phone was not reachable. After some time, the informant received a call from an unknown person, who informed that Sunil Yadav had requested that caller to make a phone call to the informant to tell him that some offenders had committed robbery of the container. Sunil Yadav was over powered, his legs and hands were tied and he was given electric shocks through battery. This happened near Kalamboli Circle. A Scorpio car intercepted the container and three to four unknown persons from that car committed that offence. Driver Sunil Yadav was dropped at Aurangabad and the container was taken away.

3. The investigation was carried out and ten accused were arrested. The charge-sheet is already filed. During the pendency of the investigation the provisions of the MCOC Act were applied by

obtaining sanction under Section 23(1) of the said Act.

4. It is the case in the charge-sheet that the accused Amol Dushing, Vilas Wagh, Shahrukh Shaikh, Vikram @ Vikki Pardeshi and Nilesh Pardeshi had actually committed robbery. The goods worth more than rupees four crores were taken away. After taking the trailer to Aurangabad, it was taken to a godown at Ghoti where the goods were unloaded and thereafter they were dispatched to various places.

5. The approval to apply provisions of MCOC Act was granted vide order dated 26th April 2017. The sanction to prosecute the present applicant under those provisions was granted under Section 23(2) of the MCOC Act on 25th January 2018. The applicant was arrested on 5th January 2018 and since then he is in custody.

6. I have heard Mr. Nikam, learned counsel for the applicant as well as Mr. Jadhav, learned APP for the State.

7. Learned APP has filed an affidavit of Assistant Commissioner of Mumbai, Crime Branch, Navi Mumbai pointing out the investigation carried out in respect of the offence and in particular

mentioning the role and evidence against the present applicant.

8. Learned counsel for the applicant submitted that the only role alleged against the applicant is that he had entered into a lease agreement with the co-accused Madhav @ Mahadev Laxman Kale in respect of the godown. The prosecution case is that the said godown was used for unloading stolen goods and from there they were dispatched to various places. He submitted that he has no connection with the commission of robbery and even otherwise there is no evidence against the present applicant. The entire investigation is concentrated on the role played by Madhav Kale. There is statement of an accused recorded under Section 18 of the MCOC Act showing that the accused had unloaded and dispatched the goods at the instance of Madhav Kale.

9. Mr. Nikam invited my attention to the order passed by this court (Coram: Smt. Sadhana S. Jadhav, J) in bail application no. 657/18 dated 25th July 2018 whereby the aforesaid accused Madhav Kale was granted bail. He also invited my attention to the order passed by this court (Coram : A.S. Gadkari, J) on 7th December 2018 in bail application no. 2190/18 whereby the other

accused Lijjo Jos Takekar was granted bail. He submitted that their roles are much more serious than that of the present applicant and therefore the present applicant deserves to be released on bail. He submitted that there is no connection of the present applicant with the entire conspiracy and no offence under the MCOCA has been committed by him.

10. Learned APP relied on the statement recorded under Section 27 of the Indian Evidence Act whereby the applicant had shown willingness to point out the place where he had concealed the documents showing the agreement between Madhav Kale and the present applicant. He, therefore, submitted that the godown was in control and in possession of the present applicant. Therefore, at this stage, it cannot be said that he has no concern with the offence.

11. I have considered these submissions. I have perused the panchanama which shows the documents relating to leasing out the godown to the present applicant. The applicant had given statement under Section 27 of the Indian Evidence Act on 8th January 2018. He had shown is willingness to point out the place

where he had kept the lease agreement. Accordingly, the police party went to Devlali and from the room shown by the applicant this agreement was recovered. Said agreement makes an interesting reading. It was purportedly executed between Madhav Kale and the present applicant. In the entire document the godown is not described by gat number or survey number from the records of the municipal corporation or revenue authorities. The description in respect of number of the property is kept blank. The agreement was for the period from 1st May 2016 to 31st March 2017.

12. There is a statement of co-accused Amol Dushin pursuant to which he had shown the godown in which the goods were unloaded. That panchanama dated 29th March 2017 shows that when the police went to that godown, the accused Madhav Kale was called and he had opened that godown with his keys. The inquiries made by the police also reveals that the godown was belonging to Madhav Kale. The panchanama itself mentioned that the said godown was belonging to Madhav Kale and that he had other godowns in the surrounding area.

13. There is confessional statement of one Shahrukh Shaikh recorded under Section 18 of the MCOC Act, wherein he has described the incident. Even there he had mentioned that the godown was owned and was in possession of Madhav Kale. Though he has retracted the confession, it is part of the chargesheet. Thus, from the entire record and affidavit filed by learned APP, the only evidence brought on record against the present applicant is in respect of the godown. However, the lease agreement itself does not describe which godown was given in possession of the present applicant. Therefore, the basic link between the applicant and that godown is not established even at this stage. Similarly, the entire allegations in respect of the possession of that godown are made only against the accused Madhav Kale, who is already granted bail by this court as mentioned earlier. Madhav Kale and Lijjo Takekar both are granted bail. The present applicant's role is not even prima facie established by the investigating agency. Therefore, at this stage, it can be safely to be recorded that there are reasonable grounds for believing that the applicant is not guilty of any offence under the

MCOC Act. Though there are two previous offences pending against him, those are under sections 452 and 380 of the IPC and there is no connection of those offences with the present offence. Those offences cannot be part of the continuing unlawful activity as is alleged against the present applicant. Looking at the incident, his antecedents and nature of evidence, it seems unlikely that he may committ such offence while on bail. Therefore, in view of the above discussion, the applicant has made out a case for his release on bail. Hence, the following order:-

ORDER

(i) The Applicant is directed to be released on bail in connection with C.R. No. I-6/17 registered at Khandeshwar Police Station, Navi Mumbai, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) Application stands disposed of accordingly.

SARANG V. KOTWAL, J.)