

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.929 OF 2019

Sharad Hiranman Mohol, Age 28 years,
Occ.Labourer, R/o.112, Mauli Nagar,
Sutardara, near Stone Crusher,
Paud Road, Kothrud, Pune
(Presently lodged in Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satyavrat Joshi with Sunil Shivaji Kamble for applicant.
Mr.S.H.Yadav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 9th December 2019

PC :

1. The applicant is arrested on 25th April 2015 in connection with CR No.115 of 2015 registered with Khadak Police Station, Pune for offences under Section 387 r/w 34 of IPC. The FIR was lodged on 14th April 2015.

2. The prosecution case is that the complainant was running a laundry business. The applicant was facing criminal trial which was pending in the Court of Sessions Court, at Pune. On 30th March 2015 the co-accused Sushil Mandal and Sachin Shilimkar visited the work place of informant and directed him to meet the applicant on the next day in Court premises. Accordingly on 31st March 2015 the informant reached in the Court premises. At about 12 pm, when the applicant was brought to the Court from jail, the co-accused took the informant near the applicant. The applicant directed him to act as per instructions of co-accused. It is further alleged that on the same

day, the co-accused met the informant in the evening and demanded Rs.3 lakh and threatened the informant of dire consequences if he does not pay the amount.

3. The investigation proceeded. Statements of witnesses were recorded. The accused were arrested. The statements of five eye witnesses were recorded. Hand sets of co-accused Sunil Mandal and Sachin Shilimkar were seized. The CDR have been obtained by the investigating officer. It is alleged that the applicant is gang leader. Eight cases were registered against him. Prior approval was sought for applying provisions of Maharashtra Control of Organized Crimes Act (MCOC Act). The approval was granted for the offences under Sections 3(1)(ii), 3(2) and 3(4) of MCOC Act. Sanction was granted u/s 23(2) of MCOC Act.

4. Learned counsel for applicant submitted that there is no evidence against the applicant. He is in custody from 25th April 2015. None of the ingredients of the offences under MCOC Act are made out against applicant. There is no evidence that the applicant was part of an organized crime syndicate or that he is engaged in continuing unlawful activity. There is delay in lodging the FIR. The material on record neither reveals that the applicant had met the informant in Court, nor it reveals that at any point of time he extorted money. The co-accused have been granted bail by the Sessions Court. The persons were unknown to the complainant. No parade was conducted by police. The call details do not form part of charge sheet. Although the prosecution is relying on the past cases, the proposal and the approval do not refer to the pending cases. The requirement to invoke provisions of MCOC Act was not fulfilled as

there was no material before the authority to grant approval or sanction. The requirement of law was to forward the charge sheet of which cognizance is taken by the Court to qualify invocation of provisions of MCOC Act. However, there was no such material before the authority which has granted approval or sanction. There is total non application of mind for granting approval and sanction. It is further submitted that the confessional statement of the accused does not state that the applicant had instructed him to extort money from the complainant. Learned counsel for applicant relied upon order passed by (i) this Court in Writ Petition No.1670 of 2019, (ii) Apex Court in case of Prasad Shrikant Purohit Vs. State of Maharashtra and another – (2015)7-SCC-440, and (iii) Apex Court in Ranjit Singh Sharma Vs. State of Maharashtra and another – (2005)5-SCC-294.

5. Learned APP submitted that there is sufficient evidence to show the involvement of applicant in the crime. The statements of eye witnesses support the prosecution case. There are several cases registered against the applicant. While forwarding the approval, entire material relating to past cases was forwarded to the authorities. Learned APP relied upon approval and sanction order. Reliance is also placed on the proposal for invoking the provisions of MCOC Act. It is submitted that there is sufficient material on record to invoke the provisions of said Act. The authorities have applied its mind to the material on record. The grounds raised by applicant can be agitated during trial.

6. The case of the prosecution is that the applicant is a gang leader. The prosecution has referred to seven cases registered

against the applicant with various police stations. Learned counsel for applicant, however, submitted that the cases are either closed or disposed off and some are pending. It is submitted that the case viz CR No.683/2007 registered with Deccan Police Station is closed. Case registered with Dattawadi Police Station being CR No.3147 of 2010 has been disposed of. The third case registered with CR No.9 of 2010 for offence u/s 302 of IPC has resulted in conviction. However, the High Court has granted bail to the applicant. The case registered vide CR No.266 of 2012 for offence u/s 302 r/w 34 of IPC was relating to the murder of the accused involved in German Bakery case, which has resulted in acquittal. The other cases are pending. According to the prosecution, during the course of investigation it is revealed that the Courts have taken cognizance of cases where punishment is more than 3 years. The applicant and the co-accused are dealing with continuing serious offences. The applicant is gang leader. Along with his associates he runs an organized crime syndicate with a view to gain pecuniary benefit by using violence, intimidation or coercion or other unlawful means. Hence, proposal was sent with investigation papers to apply provisions of MCOC Act u/s 23(1) of MCOC Act. The proposal was perused and approval was granted for application of provisions of MCOC Act. The bail application preferred by the applicant was rejected by Sessions Court. The statement of the co-accused was recorded u/s 18 of MCOC Act. The statement discloses complicity of applicant in crime. The supplementary statement of the complainant was recorded on 15th April 2015, which supports the prosecution case. The statement of Nagesh Parade, the brother of complainant, was recorded. The statement of Assistant Police Inspector Suresh Kamble was recorded on 29th April 2015.¹ His version confirms that the applicant was

brought to the Court. Although he has stated that it is not possible to mention as to with whom the applicant had conversation, the fact that applicant was brought into Court on the date of incident, has been confirmed. The statements of several witnesses were recorded. The CDR indicates that the informant was threatened to pay ransom of Rs.3 lakh. The eye witnesses present at the spot have disclosed the particulars of meeting held between applicant and the informant. The statements of witnesses and other material collected by the investigating officer show that the incident had occurred in Court premises on 31st March 2015. The applicant was brought in the Court from jail and the said opportunity was availed by him to instruct the informant to act as per directions of co-accused Sushil Mandal and Sachin Shilimkar. The CDR shows that phone calls to the informant were made by the co-accused from the hand sets seized from their custody during investigation. The informant was threatened on 31st March 2015 and thereafter till 12th April 2015.

7. Learned APP brought to my notice the proposal forwarded for granting approval. The approval dated 6th May 2015 indicate that the authority has perused the report and the documents submitted along with the proposal. The approval has been granted after going through the documents. The sanction granted u/s 23(2) of MCOC Act mentions that certified copies of previous charge sheets and the proposal for obtaining sanction, was read by the sanctioning authority. Thus, prima facie, it is shown that the authorities have considered the material. The discrepancy, if any, will be adjudicated at the time of trial. In the light of evidence against the applicant and the material as aforesaid, the ratio laid down in the decisions relied upon by learned counsel for applicant, is not applicable in the present case. In view of bar u/s 21(4) of MCOC Act and in the light

of evidence against applicant, no case for grant of bail is made out.
Hence, the Bail Application is rejected.

(PRAKASH D. NAIK, J.)

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