IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1467 OF 2017

Rafiqali Shafiqali Sayyad,
Age 48 years, Occ.Business,
R/o.Room No.402, A Wing,
Ambica Chs, Jangid Enclave, Kanakia Road,
Mira-Bhayander, Mira Road (E),
Thane, Maharashtra. Applicant
versus
The State of Maharashtra Respondent

Mr.Ashwin Thool I/by Mr.Deepak Gautam with Kunal Shejwal for applicant.
Ms.G.P.Mulekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st January 2019

PC :

1. This is an application for bail in connection with MCOC Special Case No.12 of 2016 pending in Special Court for MCOC. The offences were registered vide CR No.153 of 2016 on 20th April 2016 under Sections 302 r/w Sections 115, 120-B and 34 of Indian Penal Code r/w Sections 3 and 25 of Arms Act r/w Section 37(1)(A) of Maharashtra Police Act. Subsequently the provisions of Sections 3(1)(i), 3(2), 3(4) of Maharashtra Control of Organized Crime Act were applied. The applicant was arrested on 23rd May 2016.

2. The case of prosecution is that on 20th April 2016 the police received an information that upon instructions of Chhota Shakil and his brother Anwar, the goons from the gang of oversees based gangster Chhota Shakil will be gathering near Meena Hotel,

S.V.Road, Jogeshwari (West), Mumbai for murdering businessman from Mumbai. Accordingly the officers from Anti Extortion Cell and other officers arranged trap and accused nos.1 to 3 were apprehended with fire arms, ammunitions, surgical blades, mobile phones and other articles. The offences as stated above were registered against the accused. The investigation was transferred to DCB, CID, Unit-1 and investigation was conducted by them vide CCR No.39 of 2016. The applicant was arrested during the course of investigation. After completing investigation charge sheet is filed.

3. The applicant had preferred an application for bail before the Sessions Court which was rejected vide order dated 21st April 2017. Learned counsel for applicant submitted that no case under the provisions of MCOC Act is attracted. It is submitted that there is no evidence to show the involvement of the applicant in the crime. The applicant had no concern with the crime syndicate and no cases are registered against him along with members of gang. The applicant was not arrested along with accused nos.1 to 3. It is further submitted that there is no cogent evidence to apply the provisions of MCOC Act to the applicant. It is submitted that requisite ingredients to apply the provisions of MCOC Act are completely absent as regards applicant. The prosecution has to satisfy the requirements of continued unlawful activity, organized crime and organized crime syndicate. There is no evidence of any call being made by the applicant to the co-accused Anwar. There is no evidence to show that the applicant was associated with wanted accused or the accused who were caught red handed by police. Thus, the provisions of Sections 3(1)(i), 3(2), and 3(4) of MCOC Act are not attracted in the present case. In order to apply the said provisions, the

prosecution has to show that the applicant is involved in continuing unlawful activity and that he being member of or acting on behalf of organized crime syndicate and by way of unlawful means including use of violence or threat of violence or intimidation or coercion and with an object of gaining benefit either pecuniary or undue economic or other advantage for himself or for any other person or to promote insurgency. However, the entire charge sheet does not satisfy the requirements of the applicability of MCOC Act. It is submitted that there is no corroboration to the confessional statement of the co-accused relied upon by the prosecution. Reliance is placed on the decisions in case of **Madan s/o Ramkisan Gangwani Vs. State of Maharashtra** (2009-ALL MR {Cri}-1447) and **Mangesh Manik Kanchan and another Vs. State of Maharashtra** reported in (2016{1}-Bom.C.R.{Cri}-350).

4. Learned APP submitted that there is sufficient evidence against the applicant showing his complicity in the crime. Although the applicant was not apprehended along with other accused, the investigation conducted reveals involvement of the applicant in the crime. It is submitted that the confessional statement of accused no.2 was recorded in which he had disclosed that he was in contact with Chhota Shakil since five years and he had received finance, weapons to eliminate the victim. He has also disclosed that the accused no.4 (applicant) had financially assisted, abetted and instigated him to eliminate the businessman. During investigation it was revealed that the applicant had played active role in the crime. At the time of his arrest he was found in possession of eight mobile phones and from one of them he used to contact Chhota Shakil and his brother Anwar. The evidence also discloses that he had met the

victim on behalf of Chhota Shakil and Anwar and threatened the businessman to pay amount of Rs.4.50 crores. It is further submitted that the main accused belongs to crime syndicate and the applicant has associated himself with the present crime and played active role. He, therefore, submitted that the application be rejected.

5. I have perused the charge sheet. The statements of witnesses recorded during the course of investigation discloses involvement of applicant in the crime. It is pertinent to note that the prosecution is relying on the evidence showing involvement of the applicant in the crime. During the course of investigation it was revealed that the applicant had played a vital role in the crime. The applicant was arrested on 23rd May 2016. During his personal search, eight mobile phones were seized. The prosecution case is that from mobile number 9594095232, the applicant used to contact the main accused and his brother by net calling. It was also revealed that the applicant had met the victim on behalf of absconding accused and Anwar and threatened to pay Rs.4.50 crores or else he would be killed. It is also the case of prosecution that Chhota Shakil and Anwar were demanding amount of Rs.4 crores from the businessman as extortion money, which was refused by him. The prosecution is also relying upon call details of the mobile number of applicant referred above, which shows his association with principal accused. Thus, there is prima facie evidence to show involvement of the applicant. There are statements of the witnesses which also show the complicity of applicant in the rime. In accordance with Section 21(4) of Cr.P.C, the applicant is not entitled for bail.

6. The decisions relied upon by learned advocate for applicant were delivered in the facts of those cases. There is evidence to show

that applicant was actively involved in committing the crime. In the circumstances, no case for grant of bail is made out. Accordingly, Criminal Bail Application No.1467 of 2017 is rejected.

(PRAKASH D. NAIK, J.)

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