

Anand

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

BAIL APPLICATION NO. 1475 OF 2018

Sunny Sanjay Ahiwale .Applicant

Vs.

The State of Maharashtra .Respondent

WITH

BAIL APPLICATION NO. 1431 OF 2018

Sanjay Ramchandra Jadhav .Applicant

Vs.

The State of Maharashtra .Respondent

WITH

BAIL APPLICATION NO. 1582 OF 2018

Shakir Rafique Mahat .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. A. P. Mundargi, Senior Counsel a/w Mr. M. S. Mohite i/b.
Mr. J. J. Bardeskar, Mr. Shantanu Phanse & Mr. Ateet Mhambrey, for
the Applicant in **B. A. No. 1475 of 2018**

Ms Shraddha Sawant, Advocate, for the Applicant in **B. A. No. 1431 of
2018**

Mr. A. P. Mundargi, Senior Counsel a/w Ms Shraddha Sawant i/b.
Mr. Hrishikesh Mundargi, for the Applicant in **B. A. No. 1582 of 2018**

Mr. A. A. Palkar, APP, for the Respondent – State **in all matters**

CORAM : REVATI MOHITE DERE, J.

DATE : 08.07.2019

P.C.

. Heard learned counsel for the parties.

2. By these Applications, the Applicants seek their enlargement on bail in connection with C. R. No. 511 of 2017 registered with the Satara City Police Station, Satara, for the alleged offences punishable under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (for short 'MCOC'), under Sections 395, 323, 504, 506, 365, 120B of the Indian Penal Code and under Section 39 of the Maharashtra Money-Lending (Regulation) Act.

3. The aforesaid matters have been placed before this Court in view of the 'Not Before' order passed by Hon'ble Justice S. V. Kotwal. Learned Senior Counsel for the Applicants submits that no offences as alleged are disclosed as against the Applicants. He submits that the Applicants are in no way connected with the alleged transaction which took place in July, 2014 between the Complainant and co-accused – Pramod @ Khandya Dharashivkar. He further submitted that there is no material to show that the Applicant is an associate of Pramod @

Khandya or is a member of the Organized Crime Syndicate allegedly run by Pramod alias Khandya. Learned counsel further submitted that as far as the Applicant - Sunny Sanjay Ahiwale (Applicant in B. A. No. 1475 of 2018) is concerned, his confession recorded under Section 18 of the M.C.O.C.Act is not free from doubt, inasmuch as, the Public Prosecutor had a copy of the said confession, though the sealed envelope containing the confession was not opened by the Special Court. He submitted that in any event, the said confession has been retracted. Learned Senior Counsel submitted that even if the said confession is seen, the same shows same transaction between the Applicants and Pramod @ Khandya in Jan. / Feb., 2014 and that there is no connection or relation between this transaction, with the transaction entered into much later i. e. July, 2014, between the Complainant and Pramod @ Khandya. According to the learned senior counsel, even the Complainant has not made any allegation as against the Applicants. Learned Senior Counsel submitted that as far as Applicants – Sanjay Jadhav and Shakir Mahat are concerned, there is no material to connect them with the alleged offences, except the alleged confession of co-accused – Sunny Ahiwale, which itself, is not free from infirmities / default. He submits that having regard to the facts, MCOCA could not have been applied.

4. Learned APP opposes the Applications. He submitted that the Applicants have abetted the commission of the offences, inasmuch as, the Applicants had lent money to Pramod alias Khandya with interest and that Pramod alias Khandya had thereafter lent money to several persons, including the Complainant at an exorbitant rate of interest. He submitted that there is a confessional statement of the Applicant - Sunny Ahiwale recorded under Section 18 of the M.C.O.C., wherein the Applicant has stated that he and co-accused - Sanjay Jadhav and Shakir Mahat had advanced money to Pramod alias Khandya with interest. As far as the Applicants - Sanjay Jadhav and Shakir Mahat are concerned, he states that although there is no confession made by the said Applicants, the statement of co-accused - Sunny Ahiwale recorded under Section 18 of the M.C.O.C, shows their complicity. Learned APP has filed an Affidavit of Gajanan Rajmane, Deputy Superintendent of Police, Satara.

5. Perused the papers. According to the prosecution, the Complainant – Amir Hussain Shaikh lodged an FIR / Complaint as against Pramod alias Khandya and others (not the Applicants). The Complainant – Amir Shaikh has stated that he had purchased an Innova

car bearing No. MH-23/E/6999 from one, Shri Mokashi for a consideration of Rs. 5,80,000/-. He has stated that he paid Shri Mokashi a sum of Rs. 2,80,000/- and agreed to pay the balance sum of Rs. 3,00,000/- within a short period. According to the Complainant, he arranged for Rs. 1,00,000/- but was still short of Rs. 2,00,000/-. As the Complainant was in need of money, Mohammed Shaikh (accused) introduced the Complainant to Pramod @ Khandya (accused) in connection with the loan and after negotiation, the Complainant availed of a loan of Rs. 2,00,000/- from Pramod @ Khandya in June / July, 2014 and agreed to pay an interest @ 10% p. m. on the said amount. The Complainant paid Rs. 2,00,000/- to the owner of the vehicle, pursuant to which the vehicle was transferred in the Complainant's name, as the entire amount was received. According to the Complainant, as he could not pay the interest component to Pramod @ Khandya, in November, 2014, his Innova car was forcibly taken and his signatures were also forcibly taken on the transfer forms (T. T. forms). The Complainant has further alleged that he arranged for Rs. 60,000/- and paid the same to accused - Dhara, however, his vehicle was not returned. According to the Complainant, he tendered his willingness to repay a sum of Rs. 2,00,000/- on 05.07.2017 (after about three years) with agreed rate of interest but was told that his car was already sold to recover the amount.

Pursuant thereto, the Complainant lodged the aforesaid complaint as against Pramod @ Khandya and others (not the Applicants). Admittedly, the Applicants have not been named in the FIR nor are they alleged to have interacted with the Complainant, at any point of time. The Applicants are alleged to have advanced money i. e. Rs. 40,00,000/- each, to Pramod @ Khandya on interest, in January / February, 2014, prior to the transaction between the Complainant and co-accused – Pramod alias Khandya. Except the confessional statement of Sunny Ahiwale recorded under Section 18 of the M.C.O.C., which was retracted subsequently, within a few days, there is no material to connect the Applicants with the alleged offences. As far as the Applicants – Sanjay Jadhav and Shakir Mahat are concerned, the only material against them is the confessional statement of co-accused - Sunny Ahiwale. In his statement recorded under Section 18 of the M.C.O.C. Act, Applicant – Sunny Ahiwale has stated that he and Pramod @ Khandya were very close friends from a young age, since they were neighbours; that there are several cases registered against Pramod @ Khandya and his associates; that since Pramod @ Khandya was an old close friend, he and co-accused - Sanjay Jadhav and Shakir Mahat advanced money to Pramod @ Khandya in the beginning of 2014; that Pramod @ Khandya had approached him and co-accused – Sanjay

Jadhav and Shakir Mahat and had asked him to finance him and had agreed to pay @ 5% by way of interest on the said amount; that since the offer was good, they agreed and paid a sum of Rs. 40,00,000/- each to Pramod @ Khandya. Admittedly, there was no transaction between the Complainant and the present Applicants nor are the Applicants concerned with the same. It appears that money was advanced by the Applicants to Pramod @ Khandya sometime in January / February, 2014, whereas, the transaction between the Complainant and Pramod @ Khandya was in June / July, 2014 and the complaint was lodged in 2017, as against Pramod @ Khandya and others (not the Applicants). It also prima facie appears that there is not a single offence registered against the Applicants alongwith accused No. 1 – Pramod or any other accused to show that the Applicants are members of an organized crime syndicate. As far as antecedents are concerned, the Applicant – Sunny Ahiwale is acquitted in two cases i. e. of 2008 and 2014; in one case of 2014, there are no allegations of money lending and in the case of 2017, he was made an accused after he was accused in the present case and is released on bail in the said case. The question whether the Applicants can be said to have 'abetted' the commission of the offences in the facts of this case, and whether the Applicants can be said to be members of the organized crime syndicate, is a matter which will be decided by the

trial Court. Prima facie, considering the material on record, it cannot be said that the Applicants are guilty of the offences with which they are charged.

6. Considering the aforesaid, the Applications are allowed and the Applicants are enlarged on bail on the following terms & conditions :-

ORDER

(i) The Applicants be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 1,00,000/- each** with one or two local sureties in the like amount;

(ii) The Applicants shall report to the investigating officer of the concerned police station on the **first Saturday of every month** between **10.00 a. m. and 11.00 a. m.** till the conclusion of trial;

(iii) The Applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The Applicants shall cooperate in the conduct of the trial and shall attend the Court, unless exempted;

(v) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of

the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicants' bail.

7. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)