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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1558 OF 2018

Avishkar @ Raju Sadashiv Admane ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Ms.S.P.Parulekar for the applicant.

Smt.J.S.A Lohokare, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 18, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. The applicant came to be arrested on April 8, 2016 in crime No.169/2016 for offence punishable under sections 395 read 34 of the Indian Penal Code, section 37(1)(3) of the Bombay Police Act and section 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crimes Act (MCOCA) and sections 3(25) and 4(25) of the Arms Act registered with Warje Malwadi police station, Pune.

3. The applicant came to be charge-sheeted, having been noticed that he was working with gang leader Ajay Bhalshankar, who had a criminal history and was externed on earlier occasion.

4. The case of the applicant is, that there are two offences, including the present one, which are formed to be the bases for invoking MCOCA. Nothing incriminating is recovered from him. As he happened to be the brother of co-accused Manoj against whom six offences are lodged, the applicant is falsely implicated.

5. Learned APP opposed the claim on the ground that in 2016, the applicant has engaged himself in two offences namely Crime No.127/2016 for offences punishable under section 451, 385, 427 read 34 of the Indian Penal Code and the present one No.169/2016 for offence punishable under sections 395 read 35 of the Indian Penal Code and under under sections of MCOC Act.

6. The submissions are, the applicant is working with gang leader Ajay Bhalshankar and there is more than one charge-sheet against said Ajay, the leader of the syndicate. That being so, the application be rejected.

7. Considered the submissions.

8. The offence in which the applicant is booked are punishable with maximum of 10 years of imprisonment. So far as the offence under Crime No.127/2016 is concerned, that was committed along with his brother Manoj and co-accused Rohan. These accused persons i.e. Manoj and Rohan, are involved in six offences. Whereas, the applicant is shown to be involved in only two offences, including the present one with these two accused persons. The applicant is involved in only one offence with the gang leader Ajay Bhalshankar.

9. So far as the present offence is concerned, nothing incriminating was recovered from him so as to draw a presumption under section 22 of the provisions of MCOC Act.

10. In earlier crime, wherein the applicant is charged for trespassing, a sickle is seized. However, there is no case of any bodily injury caused by the applicant.

11. The applicant is behind bars for more than three years.

12. Though learned APP has relied upon the statement recorded under section 18 of the MCOCA of co-accused Manoj, who is brother of the applicant, said statement perhaps was retracted before it was sent to Court.

13. In the aforesaid background, in my opinion, the case of the applicant can be easily distinguished from the case of the gang leader and other co-accused persons. That being so, the application stands allowed. Hence the order :-

- i) The applicant be released on bail in Crime No.169/2016 for offence punishable under sections 395 read 34 of the Indian Penal Code, section 37(1)(3) of the Bombay Police Act and section 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crimes Act and sections 3(25) and 4(25) of the Arms Act registered with Warje Malwadi police station, Pune upon furnishing P.R. bond of Rs.1,00,000/- with one or more sureties in the like amount;
- ii) The applicant shall attend the investigating officer on every Friday in the first and third week of each English calendar month between 10.00 a.m. to 12.00 noon till the conclusion of the trial;
- iii) The applicant shall not influence the prosecution witnesses or tamper with the evidence;
- iv) In case it is noticed that the applicant is involved in similar

type of offence, liberty to the prosecution to move for cancellation of his bail;

- v) The above observations are restricted only to the extent of consideration for grant of bail;
- vi) The application stands disposed of accordingly;

(NITIN W. SAMBRE, J.)