IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1713 OF 2019

Aziz Unni Mohammed ...Applicant
V/s.
The State of Maharashtra ....Respondent

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Mr. Shirish Gupte Senior Advocate a/w Mr. Karansingh Rajput, Advocates for the applicant.
Mr. Y.M. Nakhawa, APP for the Respondent-State.
Mr. Sushilkumar Vanjari, A.P.I., A.E. Cell, Crime Branch, Mumbai.

CORAM : SANDEEP K. SHINDE, J.

Friday, 20th December, 2019.

P.C. :

Heard.

2. It is an application under Section 439 of Criminal Procedure Code, 1973 read with Section 21(4) of the Maharashtra Control of Organised Crime Act 1933 (MCOCA for short).

3. The First Information Report bearing no. 36 of 2018 came to be registered with the D.C.B. CID

for the offences punishable under Section 387, 120-B of the Indian Penal Code, 1860 (IPC for short) read with Section 3, 25 of Arms Act read with Section 37 (1) (a) read with Section 135 of the Mumbai Police Act on 22nd June, 2018. On 11.07.2018, the prior approval under Section 23 (1)(a) of MCOC Act was granted. The investigation was conducted and charge-sheet came to be filed with the first sanction of Commissioner of Police dated 17.09.2018 (first sanction for short).

4. It may be stated that in the first sanction applicants' name is not figuring.

5. After five months, supplementary charge-sheet came to be filed with fresh previous sanction where for the first time, name of the present applicant has been disclosed.

6. Prosecution case is; that from 1999 to 2001, complainant was running hotel business in the Dubai, wherein, Mr. Ali had invested around 70 Lacs Indian Rupees in the year 2000. Mr. Anis Ibrahim

Kaskar, a gangster, wanted accused, had called complainant and told that his money was invested by Mr. Ali and complainant would have to return the money with interest to him, however, Ali denied this fact when confronted. Ali was shot dead by wanted accused no. 1 (Anis Ibrahim Kaskar) in the year 2001 and thereafter complainant was repeatedly contacted by wanted accused no.1 to whom, out of fear, he paid Rs. 40 Lacs and left Dubai in 2001.

7. Prosecution alleged, that on 31.07.2017, complainant received a call from international number by a person who claimed himself to be wanted accused no.1 and gave reference of Ali's murder. He demanded Rs. 50 Lacs from the complainant, failing which was threatened to face the dire consequences. Complainant alleged that on 21.08.2017 and 23.08.2017 he had received threatening messages for ransom. He alleged, in August, 2017, he had received calls and messages from one Mr. Nasir Khan from Pakistan as apparent, through his profile status. He alleged one Hemant (co-accused) had

demanded ransom on behalf of wanted accused no.1 and number of calls from unknown sources threatening him with dire consequences. Resultantly, the subject FIR came to be registered on 22nd June, 2018.

8. In the course of investigation on 21.12.2018, name of the applicant surfaced in the confession of arrested accused Danish Ali, who disclosed applicant's complicity in the organised crime and nexus with an accused, who is member of Organised Crime Syndicate. Thus Prosecution relies on; (i) Confessional statement under Section 18 of MCOCA of Danish Ali (accused no.3) recorded on 21.12.2018; (ii) Confessional statement of Mohamed Altaf (accused no.5) recorded on 19.08.2018; (iii) Statement of applicant's brother, diamond broker and one agent;

9. Mr. Gupte, learned Senior Counsel for the applicant made the following submissions;

(i) Material on record does not attribute role to the applicant in relation to act of extortion committed as alleged by complainant in the FIR.

(ii) The applicant as it appears has been prosecuted for being a member of organised crimes syndicate allegedly run by wanted accused no.1; however no specific acts have been attributed to him except demanding contact details of diamond merchants.

(iii) The reliance of prosecution on the confessional statement of accused no.3 – Danish Ali relates to a conversation of the accused no.3 with the applicant in Dubai in relation to gathering of contact details of Indian Diamond Merchant in Russia.

(iv) Statements of independent witness in no way connects, the applicant with the organised crime.

(v) Such statements are based on untrue events and thus, the material against the applicant is insufficient to show his overt act in the continuing unlawful activities on the gang of wanted accused no.1 so as to prove his live link with the same.

(vi) The material on record, falls short of proving the guilt of the applicant, as there is absolutely no nexus or live link between the organised crime of wanted accused no.1 and the allegations made against the applicant.

(vii) That confessional statement without independent corroboration could not lead to any consequence of guilt and therefore the requirement of Section 21(4) of the said Act to grant bail is fully satisfied.

(viii) That no past criminal case has ever been registered against the applicant and or his participation in continuing unlawful activity of the organised crime syndicate which is basic requirement in invoking the provision of the MCOCA against the applicant.

(ix) Even assuming but without admitting that all allegations are taken together only indicate, if at all, to preparation to commit offence of extortion, which is not punishable under IPC.

(x) That order passed by this Court dated 12.02.2019 releasing the accused no.2 on bail, wherein accused no.2 is alleged to have taken active participation in transferring money through Hawala Channel from the wanted accused no.1 to other accused for purchase of weapons and firearms to facilitate commission of crime but role allegedly attributed to the applicant is not specific.

Mr. Gupte, learned Senior Counsel, sought bail on these grounds.

10. Prosecution has filed affidavit of the Assistant Commissioner of Police and opposed the grant of bail.

11. Before adverting to the arguments, it may be stated in the case of **Ranjit Singh Sharma (2005) 5 SCC 294**, Hon'ble Apex Court has held, "that in order to invoke MCOCA, even if a person may or may not be any direct role to play as regards the commission of organised crime, if a nexus either with an accused, who is a member of "Organised Crime Syndicate" or with the offence in the nature of "Organised Crime", is established, that would attract, the invocation of Section 3(2) of MCOCA."

Therefore, even if one may not have any direct role to play relating to the commission of an "Organised Crime", but when nexus of such person with an accused who is a member of "Organised Crime

Syndicate" or such nexus is related to the offence in the nature of organised crime, is established, by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provision of MCOCA.

12. In the confessional statement of Danish Ali (accused no.3), he disclosed; he met applicant in the year 2012 in Dubai who then mentioned to him about Daud Gang's investment in Russia and asked him to fetch the information about diamond merchants of Indian origin for extorting money from them, being a soft target. In furtherance of the same, Danish Ali confessed that he had given contacts to the applicant, which were used by wanted accused no.8 - Chhota Shakeel, to cause intimidation to persons whose contacts were provided. In furtherance thereto, Danish at the instance of Chhota Shakeel contacted Russian gangster for support however, nothing materialized. Danish Ali further disclosed that the applicant handles business of wanted co-accused Chhota Shakeel and Anis Ibrahim Kaskar

(king-pin) . He confessed that once he was cheated in a diamond deal and to recover the loss caused therein of Rs.5 Crores, he contacted applicant and Mr. Sameer (also co-accused) to whom, he paid Rs. 25 Lacs.

13. In the test identification parade conducted on 22.01.2019, the complainant identified accused, Danish Ali, as the person who had taken extortion money from him in Dubai.

14. Next confessional statement is of Mohamed Altaf - accused no.5 (Altaf for short). He confessed his association with applicant since 1982, when the applicant was working in, a watch shop in Dubai. He disclosed, that the applicant had introduced him to Nasir Khan and Danish Ali (both co-accused). It may be stated, the complainant in this case had received a threatening call from Nasir Khan for the extortion money. Confession of Altaf suggests in 2008, when he met Danish in Dubai, he found Danish was engaged in the business of diamond

in Russia with Noora and his son Suhail. In 2009, a person who was working in the Noora's office introduced him to Chhota Shakeel (wanted accused) and further Chhota Shakeel introduced him to brother of Daud Ibrahim Kaskar. He further disclosed that he heard Daud Ibrahim discussing about his diamond business in Russia and trade in weapons. He confessed in 2014, Danish helped him to obtain resident visa of Dubai. He also confessed that he assisted Chhota Shakeel in a project and received 5% commission. He further confessed in 2018, he was instrumental in Hawala transaction of 18000/- Dirhams at the instance of the applicant, who was then acting and working on behalf of Anis Ibrahim Kaskar.

15. Besides two confessions, prosecution has relied on the statement of applicant's brother recorded on 28.12.2018. It suggests, in February, 2012 when he had been to Dubai applicants' business partner Altaf (co-accused) and brother of Gangster Abu-Salim came to meet his brother and at that time,

Altaf (co-accused) told him that applicant was in business of diamond in Russia, in partner-ship with Altaf and Danish Ali (both co-accused). The statement of this witness shows at the instance of his brother, once he met Altaf and Danish in hotel at Juhu and at that time he was told that one diamond merchant had cheated them for Rs. 5 Crores and to recover the same, they were to take the help of local Gangsters. Witness further stated that, in the year 2014, Altaf obtained firearm license, at the address of his mother, and had left the firearms with him, of which the applicant used to take charge, as and when he was visiting Mumbai.

16. A statement of a diamond broker recorded on 30.12.2018, prima-facie, shows his business acquaintance, suggested him to sell diamonds to Danish Ali on credit, and Danish has-had contacts with underworld gangsters Anis Ibrahim Kaskar and Chhota Shakeel. Witness stated applicant was a partner of Danish Ali and Altaf in the diamond business. Witness further stated, once he met the

applicant in hotel Juhu residency, who then informed him that he has-had a contact with underworld gangsters, and can recover the dues of diamond traders with the help of his contacts. Witness further stated that the applicant asked him to get the details of four to five diamond traders and their phone numbers. It appears, this witness did not give such details to the applicant.

17. Thus, material on record, as discussed hereinabove, prima-facie, shows applicant was not 'just', in association with, the co-accused and the wanted accused of a Crime Syndicate; but material has disclosed his assistance to be, 'organised crime' and to a person involved therein. Confessional statement and statement of witnesses show applicant's partnership with Danish Ali and Altaf (both co-accused) in the business of diamond-trading, in Russia. The statement of applicant's brother shows, partners of applicant were indulging into the acts of commission and omission of illegal recovery of dues on behalf of diamond merchants with

the help of local gangsters. Infact, in a confessional statement, it is disclosed that the applicant was managing the business affairs of Anis Ibrahim Kaskar, Head of the Organised Crime Syndicate. Besides, it also appears, from the statement of applicant's brother that Altaf, partner of applicant, had obtained a firearms license at the address of his mother and the applicant used to take charge of firearm as and when he was visiting Mumbai. It may be stated that confessional statement of Danish Ali (accused no.3) was recorded on 20.12.2018 and he retracted the same after seven months i.e. 26.07.2019; so also Altaf retracted his statement within eight days. Be that as it may, even a statement of Altaf (co-accused) is excluded from the consideration, the statement of Danish Ali and of witnesses, one can consider objectively, to answer whether applicant had rendered assistance to 'organised crime' and/or to 'Organised Crime Syndicate' and/or to a person involved in either of them.

18. In the case of Ranjit Sharma (supra), the

Hon'ble Apex Court held ; "the communication or association must relate to a person. Such communication or association to the person must be with actual knowledge or having reason to believe that he is engaged in assisting in any manner to 'organised crime' or Organised Crime Syndicate. Thus, the offence under Section 3(2) of the MCOCA, must have a direct nexus with the offence committed by Organised Crime Syndicate."

19. The State in its affidavit in paragraph no.16 has stated thus :

> " I say that more than one charge-sheet in offences punishable with imprisonment of three years or more have been filed against the gang leader wanted accused no.1 Anis Ibrahim Kaskar and Ramdas Rahane in the preceding 10 years and the Competent Courts have taken cognizance of the said serious cognizable and non-bailable offences."

Sr. No.	Police Station	C.R. No. & Sec.	Court Name	Court Case No.	Status
1	D.C.B., C.I.D., Unit 01	27/11 u/s 302, 34, 120(B) IPC r/w Section 3, 25, 27 Arms Act r/w 37(1) (a) r/w 135 M.P.	M.M. 37th Court, Esplanade, Mumbai	Session Case No. 436/2011	Acquitted
2	D.C.B. Police Station Rajkot	2/17 u/s 307, 511, 120-B, 34 IPC r/w 25(1) Arms Act r/w 135(1) G.P. Act	Chief Judicial Magistrate Rajkot, Gujarat	Session Case No. 01/2017	Pending Trial

And further in paragraph no.17 pointed out, offences registered against the wanted accused and a gang leader Anis Ibrahim Kaskar. Out of 16 in 12 offences provisions of MCOCA are invoked.

20. In the present case the complainant was once engaged in the hotel business in Dubai but he left it, when threatened of dire consequences by accused no.1, after paying him Rs.40 Lacs. In 2017, he had received a call from international number and caller demanded Rs. 50 Lacs, failing which, was threatened to face the dire consequences. The

complainant had received calls and messages from Nasir Khan and Hemant (co-accused) for ransom on behalf of wanted accused no.1. Though, there may not be a direct involvement of the present applicant in the Crime No.36/2018, however in investigation, it is disclosed threatening calls were made by members of a crime syndicate headed by accused no.1 - Anis Ibrahim Kaskar and it is further disclosed that the applicant is not only associated with members of crime syndicate but actively engaged in the business with its members and managing the business-affairs, of the wanted accused Anis Ibrahim Kaskar. Evidence of one of the witnesses, prima-facie, indicates that the applicant was well aware that, his business partners were indulging into the act of commission of extortion with the objective of pecuniary gain and for benefit of members of organised crime by sending threat of violance with intention of terrorizing business community in Mumbai, with the help of the local gangsters and this fact was disclosed by him to a witness whose statement was recorded on 30.12.2018.

Therefore it is not 'just' association of the applicant with the members of the crime syndicate but it appears, such association was with actual knowledge that he is assisting the "Organised Crime Syndicate."

21. Thus, evidence available on record, prima-facie, disclosed complicity of the applicant in assisting the members of crime syndicate to commit and organised crime.

22. Application is rejected.

(*SANDEEP. K. SHINDE, J.*)