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

CRIMINAL BAIL APPLICATION NO. 1653 OF 2018

Amar Bharat KaleApplicant

V/s.

The State of MaharashtraRespondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1654 OF 2018**

Amol Shivaji ManeApplicant

V/s.

The State of MaharashtraRespondent

Mr. Abhijeet A. Desai i/b Desai Legal for the applicants
Ms. Sharmila S. Kaushik APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 25, 2019.

P.C.

Applicants are seeking regular bail in MCOCA in Special Case No. 4/2016 pending in Special MCOCA Court at Alibaugh arising out C.R. No. 97/2016 registered with Kharghar Police Station for an offence punishable under section 364(A), 385, 464, 465, 471, 120

(B) r/w 34 of the Indian Penal Code and u/s. 3(1)(II), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (Hereinafter referred to as 'MCOCA' for the sake of brevity).

2 The prosecution case is, complainant is in jewellery business about which accused were aware of. On 25/03/2016, son of the complainant Pravin did not returned home having gone a day earlier for attending a pre-wedding function, Sachin son of Bajrang Shinde, informed him that his son Pravin and Bajrang Shinde were kidnapped and ransom of Rs. 10 Lakhs was demanded. A threat to kill Pravin and Bajrang was also given, in case the demand is not fulfilled. Name of Pintu Pawar came forward as the person who has committed the said offence, resulting into registration of crime of kidnapping being Crime No. 97/2016.

3 In the investigation it transpired that accused in the crime in question are conducting themselves in an organised manner, being member of crime syndicate. Some of the co-accused of the syndicate are involved in similar type of offences for pecuniary gain, as such provisions of MCOCA are invoked.

4 In the aforesaid background, the learned counsel for the applicants submits that applicants are not involved in any of the serious offences which are punishable with life imprisonment or death. According to him, there is no material on record to infer *prima facie* involvement of the applicants in the crime in question. According to him, there is no justifiable reason to invoke and *prima facie* infer the offence under stringent provisions of MCOCA against them as they cannot be termed as members of organised crime syndicate. According to the learned counsel for the applicants but for the present single crime there is no criminal history or antecedents.

5 Both the applicants were arrested on 18/05/2016.

6 The learned counsel for the applicants in the aforesaid background submits that in the F.I.R. there is no reference of each of the applicants of any overt act in the commission of crime. According to him, in the prior approval order dated 15/08/2016, applicant Amar Kale is shown to be absconding. He would then urge

that in the supplementary statement, the name of the applicant was cropped up, which is inserted by way of afterthought. He would also submit that C.D.R. details which were placed on record cannot be inferred to the detriment of the applicant. According to him, the confessional statement recorded under section 18 of the MCOCA of co-accused Santosh though refers to both applicants, however only role attributed is that of presence at a subsequent stage or at the time of commission of crime. He submits that as such, both applicants are entitled to be released. The learned counsel for the applicants would also rely upon the order of this Court and Sessions Court in the matter of Dhanaji Sakalkar, Sandipan Bhosale, Tejas Patil, Santosh @ Aaba Waghmare ordering release in this very crime. The contention is, the applicants are similarly situated.

7 *Per contra* the learned APP opposed the claim and submits that against gang leader Subhash Mane @ Appa @ Ravi @ Bunty there are in all 5 offences registered under section 392 or 394 of the Indian Penal Code and the applicants being member of the said crime syndicate, MCOCA provisions are rightly invoked against

them. According to the learned APP, there is sufficient material on record to infer *prima facie* involvement of the applicants in the crime in question as there is presumption against the applicants under the provisions of MCOCA. It is also claimed that an audio clip seized in the investigation of the crime in question speaks of conversation between applicant Amol and witness Sandeep Gaikwad wherein a ransom of Rs. 10 Lakhs was demanded. Applicant Amol also claimed to have called co-accused Dhanaji. Tower location of mobile phone movement of applicants sufficiently speaks of applicants were moving with the kidnapped victims.

8 Considered rival submissions.

9 The release of co-accused by the order of this Court passed in Bail Application no. 1609/2017 in favour of Dhanaji Sakalkar is not in dispute. So far as order of release in favour of co-accused Dhanaji is concerned, the said accused was arrested on 04/04/2016 in Crime No. 97/2016 which was initially registered for offences under the Indian Penal Code and provisions of MCOCA was invoked after the sanction was granted on 04/11/2016. Since the law laid down

by the Apex Court in the matter of **Dhivan Vs. State [2010 MLJ (Cri) 35]** provides for continuation of the bail till trial on such technical ground, prayer for bail came to be allowed.

10 As far as case in hand is concerned, the confessional statement under section 18 of MCOCA of Pravin Darekar, Sandeep Gaikwad who initially negotiated with the accused persons for extortion amount, Banrang Shinde another victim and Dnyaneshwar Bhosale speaks of general allegation of demand of ransom by applicant Amar Kale and presence of another applicant Amol Mane at the time of execution of offence. Witness Sandeep Gaikwad who negotiated with the accused persons on the issue of payment of extortion amount speaks of threat issued by co-accused Pintu Pawar alleging that present applicant Amar Kale is a dangerous person. Bajrang Shinde in his confessional statement made general allegations of assault whereas Dnyaneshwar Bhosale has not referred to the present applicants in his confessional statement.

11 Proposal for sanction under section 23 of the MCOCA was

forwarded on 13/08/2016 to the Joint Commissioner of Police, New Bombay which was approved on 15/08/2016 and as such provisions of MCOCA are invoked.

12 It is the case of the prosecution that out of the demand of Rs. 10 Lakhs demanded, what was paid by the representatives of Bajrang Shindeto co-accused Misal Master of Rs. 2.5 Lakhs. It is not the case of prosecution that either of the applicants have received the amount from the victim or their representative.

13 As far as applicants are concerned, there is only single offence i.e. present one registered against them whereas against the main accused there are about 5 offences. Applicants have neither participated or entered into any conversation in negotiating the amount of extortion. Apart from general allegation of assault, no specific overt act is attributed much less of receiving the amount of extortion.

14 Apart from above, investigation speaks of recovery of paltry

amount which is claimed to be part of the amount of extortion, however, there is no recovery of jewellery, vehicle etc from the applicants.

15 As stated herein above, in all four accused are ordered to be released, three of whom by this Court and one by the Sessions Court. The role attributed to the accused Dhanraj and other similarly placed accused cannot be equated with that of role attributed to the applicants in the crime in question.

16 In the aforesaid background, in my opinion, a strong suspicion is created as regards the involvement of the applicants in the crime in question being members of organised crime syndicate. The case against applicants can be considered at par with that of co-accused Sandipan Bhosale, Tejas Patil and Santosh Waghmare. Apart from above, what is noticed is statements were recorded at much later stage. That being so, in my opinion, case for grant of bail is made out.

17 That being so, both these applications are allowed. Hence,

following Order:

(A) Applicants be released in MCOCA in Special Case No. 4/2016 pending in Special MCOCA Court at Alibaugh arising out C.R. No. 97/2016 registered with Kharghar Police Station on furnishing P.R. bond in the sum of Rs. 1,00,000/- each with two solvent sureties in the like amount.

(B) Till framing of charge, both applicants shall keep themselves away from the territorial jurisdiction of Taluka Malshiras.

(C) Applicants shall not influence the witnesses or tamper with evidence.

(D) If applicants found involved in similar type of offence, it shall be open for the prosecution to move for cancellation of bail directly to this Court.

18 Applications stand disposed of.

[NITIN W. SAMBRE, J.]