

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1402 OF 2018
IN
CRIMINAL APPEAL NO.653 OF 2018

Deepak Dalvirsingh Sisodiya.] ... Applicant

Versus

The State of Maharashtra & Anr.] ... Respondents

Mr. Rajendra J. Rathod a/w Mr. Ali Bubere for Applicant.
Mr. Pradeep Gharat, Spl.P.P. a/w Mr. H. J. Dedhia, APP for State .

CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.
DATE :- JANUARY 07, 2019

P. C. :-

1. This is an application for release of the Applicant on bail during pendency of the Appeal.
2. The Applicant / original accused no.9 was convicted for commission of offences punishable under Sections 3(2) and 3(4) of The Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOCA Act') and under Section 120B of the Indian Penal Code. The major sentence awarded was that of life imprisonment.

3. The prosecution case is that one Journalist named J. Dey had published articles against leader of an organized crime syndicate; due to which, a conspiracy was hatched to commit his murder. According to the prosecution case, the accused no.1 Satish Kalya had shot the deceased and this Applicant had supplied 25 cartridges to him, which were used in committing the offence.

4. We have heard both the sides. Mr. Rajendra J. Rathod, learned Counsel for the Applicant, submitted that as per the prosecution case, the cartridges were handed over to the main accused on 14/05/2011. The articles in question were published on 20/05/2011 and 02/06/2011. The murder was committed on 11/06/2011. Mr. Rathod, therefore, submitted that the present Applicant could not have been aware of the conspiracy hatched to commit murder of the deceased. He pointed out that the only evidence against the present Applicant is the confession recorded under the provisions of Section 18 of the MCOC Act. He further submitted that there is no corroborative evidence brought on record by the prosecution in support of the statements made in the confessional statement. He further submitted that even recording of

the confession is not beyond suspicion. He invited our attention to the evidence of the Police Officer who had produced the present Applicant before the concerned authority for recording of his confession. He pointed out that the medical papers show that the medical examination of the Applicant was completed at about 6.25 p.m. on 03/08/2011 and thereafter the confessional statement was recorded after 6.45 p.m. However, the Police Officer (PW 106 - API Shinde) who had taken the Applicant to the concerned officer (PW 124 - DCP Dr.Dorje) for recording the confession, has deposed that the Applicant was taken for medical examination after his confessional statement was recorded. He submitted that this apparently contrary statement of the Police Officer shows that the confession was not actually recorded and it is a fabricated document. He further submitted that as per the rules made under the MCOC Act, the accused who had shown willingness to confess, was required to be given clear 24 hours period to reconsider his decision. In this case, according to learned Counsel Mr. Rathod, this compliance has not been made by the investigating agency and therefore, it creates further doubt about recording of the confession and it shows that it was not voluntarily made. He further submitted that the Applicant had his leg amputated

way back in the year 1999 and he has to continuously take pain-killer injections. He further submitted that because of these injections, the Applicant was not in a proper state of mind to give the confession and therefore, the confession has been vitiated. He lastly submitted that the Applicant was on bail during trial and has not misused the same. He invited our attention to the observations made in the order granting bail to the Applicant during trial.

5. On the other hand, Mr. Pradeep Gharat, learned Spl.P.P. For State, submitted that the confession is a substantive piece of evidence which needs no further corroboration. He submitted that the confession shows as to how the Applicant was involved in an organized crime. He further submitted that the trial Court has properly dealt with the aspect of recording of the confession. The trial Court has considered the timing of recording of the confession. He submitted that there was no ambiguity in the timing of recording of the confession.

6. We have considered the rival submissions. As far as the conspiracy part is concerned, the Applicant is convicted for

commission of offences under the MCOC Act. It is not possible to record any finding at this stage that the Applicant has not committed any offence under the MCOC Act. As far as the recording of confession is concerned, all the submissions made by learned Counsel Mr. Rathod can be considered only at the final hearing stage and at this stage, we cannot go in depth and we cannot analyze the evidence in detail to find out whether the confession was made properly or it is vitiated. It remains a matter of appreciation of evidence.

7. The confession does show that the Applicant had taken active part in the activities of the organized crime syndicate knowingly. The main accused had worked as the Applicant's bodyguard. The Applicant had supplied the cartridges to him being aware of his background.

8. The learned trial Judge, in paragraph 395 of his Judgment, has given good reasons to repel the contention that the difference in timings in respect of medical examination of the Applicant suggests that the confession was not recorded as alleged by the prosecution.

9. The fact that the Applicant was on bail during trial does not carry much weight in the present circumstances as the Applicant was convicted at the conclusion of a full-fledged trial after the prosecution had led its evidence. The observations made in the order granting him bail during trial will be of no assistance to the Applicant in the light of the evidence led by the prosecution during trial.

10. In this view of the matter, we are not inclined to grant relief to the Applicant. In the result, the Application is rejected.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)