IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2352 OF 2018

Vikrant Harish Varandani … Applicant
Vs.
The State of Maharashtra … Respondent
…
Mr. Niteen Pradhan a/w Ms. S.D. Khot a/w Mr. Shahen Pradhan for the applicant.
Mr. A.R. Kapadnis, APP for the Respondent-State.
...

CORAM : PRAKASH D. NAIK, J.
DATE : 22nd JANUARY, 2019.

P.C.

1. Applicant is seeking bail in connection with CR No. 47 of 2017 investigated by Anti Extortion Cell, General Crime Branch, Mumbai. FIR was lodged on 28th October, 2017 for the offence punishable under Section 387 read with 34 of Indian Penal Code. Applicant was arrested on 28th October, 2018. Subsequently, the provisions of Sections 3(1)(ii), 3(2) and 3 (4) of the Maharashtra Control of Organized Crime Act, 1999 were applied.

2. Case of the prosecution is that complainant is engaged in the business of property consultant in the name and style of 'Nirvana Enterprises'. In the year 2008-2009, one Sai Visava Co-operative

Housing Society had approached the first informant for the purpose of finding a suitable builder / developer for re-development of the property of the Society under the Slum Rehabilitation Scheme. The society has promoters and 511 members. Subsequently, society had appointed M/s Ami Corporation as developers for the said Project and the First Informant was appointed and nominated as the Project consultant for this purpose. M/s Ami Corporation had recognized only 90 members to be eligible under the SRA Scheme out of 511 members. First informant was to provide documentation for the remaining members. M/s Ami Corporation entered into a Joint Development Agreement with M/s. Paradigm Realty wherein applicant was employee. First informant was against the idea of introducing the aforesaid concern. Meeting was conveyed in the last week of June, 2017. Informant attended the said meeting alongwith Mr. Prasad Mhatre, Mr. Nitin Thakker, promoter of Ami Corporation and applicant being representative of Paradigm Realty. Applicant had allegedly warned the complainant that he shall not cause any obstruction in the said project and the applicant was connected with the underworld and he would employ his contacts to cause trouble. Due to the quarrel, talks had failed. On 12th July, 2017, first informant received a call from accused No.2 Sunil Jadhav who told the first informant that Mr. Dashrath Shinde Accused No.1 wanted to talk to him. First informant got intimidated by the call as he was aware that Accused No.1 is a known gangster attached to Ravi Pujari. Caller threatened the complainant not to obstruct the work of Nipun Thakkar and told him to settle the matter with him. Despite several messages from accused No.1, the complainant avoided to meet him. On 8th September, 2017, the informant received a call from international number. Caller identified himself as Ravi Pujari and threatened him to settle the dispute with Nipun Thakkar and his partner and to handover the Project to him. Caller also stated that informant was provoking him to do something which he would not like to do and that he knows what steps he should adopt against him. FIR was lodged on 28th October, 2017.

3. During the course of investigation statement of witnesses were recorded. Provisions of MCOC Act were applied. After completing investigation, chargesheet has been filed and the case is pending before MCOC Special Court. Applicant had preferred an application for bail before the Sessions Court which were rejected on 11th July, 2018 and 23rd August, 2018.

4. Learned counsel for the applicant submitted that chargesheet does not mention that accused No.1 told the complainant that he was calling on behalf of the applicant. Transcript dated 8th September 2017 did not refer to the name of the applicant. Role attributed to the applicant is that he has threatened the complainant in meeting of June 2017. Applicant has no nexus with the crime syndicate. Accused No.5 has been granted bail. Applicant is employee of M/s. Paradigm Realty. Transcript dated 8th September, 2017 did not show that the applicant had any conversation with accused No.1. There are contradictions in the statement of the witnesses.

5. Learned APP submitted that there is sufficient evidence against the applicant. In June, 2017, the applicant had threatened the complainant of dire consequences by stating that he had links with underworld. It is submitted that threats issued by the applicant were implemented by him with the help of co-accused. It is submitted that the provisions of Section MCOC Act are applied against the applicant as he had utilized the services of underworld. There is evidence to show that the applicant had approached accused No.1 in the Court and had given telephone number of the complainant and in pursuant to that threats were issued to him. It

is submitted that link of the applicant is established with the co-accused. Complainant had received threatening call from accused No.1 as well as from the absconding accused who is gang leader. Learned APP pointed out the statement of witnesses. It is further submitted that the applicant is involved in serious crime and bail may not be granted to him.

6. Prosecution case as stated herein above is that applicant was employee of M/s. Paradigm Realty. Meeting was conveyed to sort out differences in the last week of June, 2017. The applicant had allegedly threatened the complainant No.1 to cause obstruction and that he has connection with underworld gang. There is nothing on record to show that applicant has any association with accused No.1 and 2. There is no evidence to establish that applicant is a member of the crime syndicate headed by absconding accused and accused No.1 and 2. Applicant had not indulged in any other cases with co-accused. It is pertinent to note that alleged threat was issued by the accused No.1 to the complainant asking him not to obstruct the work of Nipun Thakkar. There is no evidence to show that the accused No.1 had told the first informant that he was calling at the instance of the applicant. The call transcription did not mention the name of the

applicant even once during conversation. The role that has been ascribed to the applicant is that in the meeting held in last week of June 2017, he had threatened the first informant saying that he has connection with underworld and would cause trouble to him if he did not stop causing obstruction in the project. Prosecution has not produced any evidence to prove that the applicant has any nexus with the organized crime. Accused No.5 has been granted bail by the Sessions Court vide order dated 11th April, 2018. The said accused was purportedly acting as a Hawala agent and carried out Hawala transaction for Ravi Pujari in the past. There is nothing on record to show that the applicant was in touch with the first informant after the meeting in June 2017. The prosecution has relied upon the witnesses who have stated that the applicant was present in the Thane Court to draw connection between the applicant and the alleged threat call. The witnesses have not made any statement that they saw the applicant having talk with accused No.1 and nothing is disclosed to show that the applicant has instructed accused No.1 to threaten the first informant. There is no cogent evidence to show that the applicant has arranged sum of Rs.50,000/- for paying it to accused No.1 as consideration for threatening first informant. There is no evidence to show that the applicant has used any violence against the first informant and no offence has been registered or chargesheet is filed against the applicant except the present case. Statement recorded during the course of investigation alleges that the applicant had given phone number to the co-accused and from the mobile phone of Daya Jadhav, accused No.1 had issued threat. However, the statement of Siddharth Gajghate recorded under Section 164 of Code of Criminal Procedure shows that Daya Jadhav dailed a number on mobile of applicant and gave it to accused No.1 and thereafter he had talk with the complainant. Except this evidence which is contradictory and vague, there is no evidence to establish link of the applicant with the organized crime.

7. In order to attract the provisions of the MCOCA, there has to be continuous unlawful activity which is prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of 3 years or more, undertaken either single or jointly, as member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before the competent Court within the proceeding period of 10 years and that Court has taken cognizance of such offence. It is settled law that unless nexus of the accused is shown

with main accused, who was a member of the organized crime syndicate, the accused cannot be said to have conspired or abetted the commission of an organized crime. It is submitted that the only evidence that the prosecution has brought up to show the nexus is the statement of the witness who mentions that the applicant was there in Thane Court on 12th July, 2017 when the accused No.1 was brought there. The prosecution has failed to establish that the applicant met the accused No.1 or even spoke to him. Therefore, the provisions of MCOC are not applicable to the applicant and he cannot be charged under the provisions of section 3 of the MCOCA.

8. In the light of the aforesaid observations and embargo under Section 21(4) of MCOC Act and the principles enunciated in the decision of the Supreme Court in the case of *Ranjitsing Brahmanjeetsing Sharma Vs. State of Maharashtra and another*[1], bail can be granted to the applicant. Hence, I pass the following order.

ORDER

i. Criminal Bail Application No. 2352 of 2018 is allowed;

ii. Applicant is directed to be released on bail in connection

1 (2005) 5 SCC 294

with MCOCA Case No. 3 of 2018 pending before the Additional Sessions Judge, City Civil and Sessions Court, Greater Bombay arising out of CR No. 47 of 2017 registered with Kandivali Police Station, Mumbai on furnishing P.R. Bond of Rs.50,000/- with one or more sureties in the like amount;

iii. Applicant is permitted to furnish cash security in the sum of Rs.50,000/- for a period of four weeks;

iv. Applicant shall report to the Anti Extortion Cell, General Crime Branch CID Unit Mumbai once in a month on first Saturday between 11 a.m. to 1 p.m. till further order;

v. Applicant shall not tamper with the prosecution witnesses;

vi. Applicant shall attend the trial Court on the date of hearing of the case regularly, unless exempted by the trial Court;

vii. Applicant shall not leave India without prior permission of trial Court;

viii. Criminal Bail Application No. 2352 of 2018 stands disposed off.

(PRAKASH D. NAIK, J.)