

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2608 OF 2018

Dinesh Narayan Rai, Age 52 years,
Occ.Business, R/o.F-18, Bansi Amrut Nagar CHS,
Near Police Chouki, Amrut Nagar,
Ghatkopar (W), Mumbai-400 086.

Applicant

versus

The State of Maharashtra

Respondent

Mr.S.V.Marwadi I/by S.H.Pasi for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th February 2019

PC :

1. The applicant is seeking bail in accordance with Section 167(2) of Code of Criminal Procedure, 1973 in connection with CR No.I-196 of 2017 registered with Kasarvadavali Police Station. The FIR vide CR No.I-196 of 2017 was registered for the offences under Sections 385, 387 of Indian Penal Code on 5th October 2017.

2. The case of prosecution is that the complainant was working as a Security Officer with Roma Builders Private Limited, Thane. On 22nd September 2017 a phone call from unknown person was received on the cell phone of Mahesh Pamnani. Since the call was received from unknown person, the receiver did not respond to the call. However, Mr.Pamnani handed over his phone to the complainant and told him to attend the call. The caller threatened the complainant and demanded a sum of Rs.10 crores. The complainant informed about the threat to Mr.Pamnani. The

complaint was lodged vide CR No.I-196 of 2017 with Kasarvadavali Police Station. On 6th October 2017 Anti Extortion Cell received information that two members of Ravi Pujari gang are coming to Ghodbundar Road to fire at one builder who refused to give extortion money. Trap was laid down and two persons were apprehended namely Nitin Rai and Dinesh Narayan Rai. They were carrying two magazines containing two rounds each along with pistols which were seized by police. The accused disclosed that they are members of Ravi Pujari gang and that they had demanded extortion money from one builder which was not given the said builder and hence they were sent by their gang leader to fire at the office of builder. The said persons were arrested vide CR No.II-30 of 2017 registered with Kasarvadavali Police Station for offences under Sections 3, 25(1)(b)(a) of the Arms Act r/w Sections 37(1), 135 of Maharashtra Police Act. The said FIR was registered on 6th October 2017. During the course of investigation of CR No.II-30 of 2017 it was revealed that the gangster Ravi Pujari had threatened and demanded extortion money from Roma Builders. Hence, custody of the accused Nitin Rai and Dinesh Rai (applicant) was taken in CR No.I-196 of 2017 on 24th October 2017. The investigation proceeded. The charge sheet was filed vide CC No.1166 of 2017 in connection with CR No.I-196 of 2017 within a period of 57 days.

3. Since the accused were members of organized crime syndicate headed by under world gangster Ravi Pujari, the investigating officer forwarded proposal along with investigation papers vide letter dated 17th February 2018 for seeking prior approval under Section 23(1) (a) of Maharashtra Control of Organized Crime Act ('MCOC Act'). The authority perused the documents and proposal and granted

approval u/s 23(1)(a) of MCOC Act on 17th February 2018. The provisions of MCOC Act were invoked. While granting prior approval it was observed in the approval order dated 17th February 2018 that approval is granted to invoke provisions of Sections 3(1) (ii), 3(2) and 3(4) of MCOC Act. Subsequently supplementary charge sheet was filed under the provisions of MCOC Act on 30th June 2018.

4. The applicant had preferred an application for bail before the Court of JMFC which was rejected on 30th December 2017. The applicant thereafter preferred an application for bail before the Sessions Court on 5th February 2018. The said application was opposed by prosecution by filing say dated 21st February 2018. The application was opposed and hence it was rejected by order dated 3rd April 2018. The applicant thereafter preferred application for bail in accordance with Section 167(2) of Cr.P.C and under Section 21(2) of MCOC Act. The said application was rejected by order dated 2nd April 2018 by Special Judge, MCOC, Thane. The applicant thereafter preferred another application before Special Court for MCOC on 25th April 2018 u/s 167(2) of Cr.P.C and the said application also was rejected by order dated 25th June 2018.

5. Learned advocate for applicant submits that the applicant is entitled for bail within purview of Section 167(2) of Cr.P.C. It is submitted that the charge sheet for the offences under MCOC Act was filed beyond stipulated period without seeking extension of time to file charge sheet on 30th June 2018. Hence applicant was entitled for bail u/s 167(2) of Cr.P.C. It is submitted that the first charge sheet was filed in relation to the offences which are subject matter of

CR No.I-196 of 2017, however, after invoking the provisions of MCOC Act, the charge sheet ought to have been filed within stipulated period. The charge sheet filed in connection with CR No.I-196 of 2017 cannot be considered as charge sheet in the MCOC case. It is submitted that the charge sheet was not filed within 180 days under the provisions of MCOC Act and the Court has committed an error in rejecting the application for bail. The period for calculating the time for filing charge sheet under the provisions of MCOC Act would start after the invocation of provisions of MCOC Act and hence the charge sheet under the MCOC Act filed on 30th June 2018 was beyond the statutory period and thereby the applicant was entitled for bail. Learned counsel relied upon the decision in the case of (i) The State of Maharashtra Vs. Bharti Verma (2002)2-SCC-121; (ii) Sachin Rathod Vs. State of Maharashtra delivered in Criminal Appeal No.732 of 2018, (iii) Rambir Shaukin Vs. State of NCT of Delhi (Criminal Appeal No.2181-2182 of 2017) and (iv) Rajesh @ Raju Narayan Amin Poojari and another Vs. State of Maharashtra (2008-ALL M.R.{Cri}-1912)..

6. Learned APP, however, submitted that there is no infirmity in the order passed by subordinate Courts rejecting the application for bail preferred by the applicant. The prosecution has filed an affidavit dated 28th November 2018 and additional affidavit dated 16th January 2018 opposing grant of bail. The prosecution contends that there is sufficient evidence against the applicant showing his involvement in the crime. It is submitted that after completion of investigation in CR No.I-196 of 2017 report was submitted to the Commissioner of Police and sanction was accorded on 25th June 2018 to file charge sheet against the accused. The charge sheet was

filed before the Special Court for MCOC on 30th June 2018. It is submitted that prior approval for applying the provisions of MCOC Act was granted on 17th February 2018. After completion of investigation, as per the provisions of Section 173(8) of Cr.P.C, proposal u/s 23(2) of MCOC Act was submitted for seeking permission for filing supplementary charge sheet. The concerned authority has given sanction vide letter dated 25th June 2018 and thereafter on 30th June 2018 charge sheet was filed. It is submitted that the charge sheet was already filed before the concerned Court in connection with CR No.I-196 of 2017 within stipulated time and the charge sheet under the provisions of MCOC Act is only supplementary charge sheet which did not warrant extension of time. It is submitted that the ground agitated by the applicant invoking Section 167(2) of Cr.P.C is not available to the applicant. Hence, the application be rejected.

7. I have perused the documents on record. Admittedly the FIR vide CR No.I-196 of 2017 was registered on 5th October 2017 for offences under Sections 385, 387 of IPC with Kasarvadavali Police Station. Pursuant to that, CR No.II-30 of 2017 was registered on 6th October 2017 for the offences under Sections 3, 25 of Arms Act. The applicant was arrested in CR No.II-30 of 2017 on 6th October 2017 and his transfer of custody was sought in CR No.I-196 of 2017 on 24th October 2017. Thus, the applicant was arrested in the second FIR on 24th October 2017. The charge sheet was admittedly filed on completing investigation vide CC No.1166 of 2016 within a period of 57 days in connection with CR No.I-196 of 2017. Approval for invoking the provisions of MCOC Act was granted on 17th February 2018 and sanction to file charge sheet against applicant under MCOC

Act was granted on 25th June 2018 and the charge sheet was filed on 30th June 2018.

8. The applicant had applied for bail vide Bail Application NO.347 of 2018 u/s 439 of Cr.P.C before Sessions Court, which was not pressed on 21st February 2018. The prosecution has carried out further investigation u/s 173(8) of Cr.P.C for offence under the provisions of MCOC Act and the charge sheet was filed thereafter as stated above on 30th June 2018. Since the charge sheet relating to CR No.I-196 of 2017 was already filed within stipulated time, the proposal was forwarded for getting approval of the provisions of MCOC Act and the said approval was granted on 17th February 2018. The investigating machinery has thus conducted investigation under the provisions of MCOC Act after filing of the charge sheet in the principal offence which would indicate that the investigating machinery had conducted further investigation and then filed charge sheet. In the circumstances the question of invoking Section 167(2) does not arise.

9. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.2608 of 2018 is rejected.

(PRAKASH D. NAIK, J.)

MST