

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

CRIMINAL BAIL APPLICATION NO. 2614 OF 2018

Mohd. Kayyum Naeem Shah

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Mohsin Khan Pathan for applicant.

Mr. R.M. Pethe, APP, for State.

Mr. Chavan, API. V.P. Road Police Station, for State.

Mr. Kadam, PSI, present.

CORAM : PRAKASH D. NAIK J.

DATE : 8th MARCH 2019

P.C.:

1 The applicant is seeking bail in CR No. I-463/2015 registered with Shivaji Nagar, Police Station, Mumbai. The offences were registered under Sections 384, 34 Indian Penal Code. The first information report was lodged on 01.11.2014, subsequently the charge under Sections 465, 471 of Indian Penal Code were added and the provisions of MCOC Act, were invoked under Sections 3(1)(ii), 3(2) and 3(4) of MCOC Act.

2 The prosecution case is that the main accused Gotya Chikane and others including the present applicant visited the work place of informant and demanded amount of Rs. 30,000/- and left the place. On 31st October, 2014 the informant was threatened on his mobile by accused Gotya Chikane with dire consequences if the amount is not paid. The first information report was lodged and investigation proceeded. The applicant

was arrested and granted bail, subsequently approval was granted under Section 23(1)(a) of MCOC Act to apply the provisions of the said Act. Subsequently sanction order was passed by the Commissioner of Police under Section 23(2) of MCOC Act for the prosecution of the accused for the offenses punishable under Section 120(B), 465, 471, 387, 34 of Indian Penal Code r/w. Section 3(1)(ii), 3(2), 3(4) of MCOC Act. The applicant was rearrested on 21.02.2015 and since then he is in custody.

3 The applicant preferred an application for bail before the Special Court for MCOC which was rejected on 04.07.2015.

4 Learned advocate for the applicant submit that initially the offence was registered under section 387 r/w. 34 of Indian Penal Code. The applicant was arrested and granted bail. He was again rearrested after invoking the provisions of MCOC Act and then he is in custody since 2015. There is no evidence to establish that he is a member of the gang headed by the main accused. He is not involved in any other cases with the main accused. The provisions of MCOC Act are not applicable to the applicant. The approval and sanction was mechanically granted for prosecuting the applicant for the said offences. The applicant has not played any role in the crime. The prosecution case did not satisfied the requirement of the definition of organized crime and continuing unlawful activity as

contemplated under the provisions of MCOC Act.

5 Learned assistant public prosecutor submitted that applicant is a part of crimes syndicate headed by the main accused Gotya Chikane threats were issued to the informant about ransom. The offence of extortion was registered against the accused. The main accused is involved in several serious crimes amounting continue unlawful activities and the applicant is associated with him and therefore, the provisions of the MCOC Act are rightly applicable to the applicant. Accused Gotya Chikane is the leader of crimes and he is indulging in extortion activities by threatening businessman in the locality. The applicant is named in the first information report and there is direct involvement of the applicant with main accused Gotya Chikane.

6 I have perused the charge sheet. The first information report was lodged on 01.11.2014. On perusal of the first information report it can be seen that according to the complainant he was threatened on 28.10.2014. It is alleged that brother of Gotya Chikne, Sachin Chikne had visited the place of incident along with applicant and one Dipesh. The applicant and Dipesh are residing at plot No. 25 and 26 and hence the informant knows them. Sachin Chikne demanded an amount of Rs. 30,000/- from the complainant. On refusal to pay the amount, the informant was

threatened and all of them left the place. Thereafter on 31.10.2014 the complainant received a call on his mobile phone and the caller identified himself as Gotya and threatened complainant. He threatened as to how much amount would be paid to him by the complainant with regards to work carried out at plot no. 25. During the course of investigation the statements of witnesses were recorded. The supplementary statement of the complainant was recorded when he has referred to the threats issue to him by Sachin Chikne and Gotya Chikne. Similarly the statements of other witnesses i.e. witness no. 12, witness no. 14, witness no. 17 and witness no. 18 were recorded, all of them refused to the presence of the applicant along with the co-accused on 28.10.2014. Apparently, except being present with the co-accused on the aforesaid date no overt act is attributed to the applicant. He is not involved with the main accused in any other case. Several cases indeed registered against the main accused. However, the applicant is not involved in extortion case or any other case with the main accused. In the present case his presence was indicated on 28.10.2014 and threats were given by the other accused. The applicant was arrested and granted bail. However, he was rearrested as the provisions of MCOC Act were invoked. Considering the aforesaid circumstances the embargo laid down under Section 21(4) was not act as per granting bail to the applicant. Hence the application is required to be allowed.

ORDER

- i) Criminal Bail Application No. 2614 of 2018 is allowed and disposed off;
- ii) The applicant is directed to be released on bail in connection with MCOC Special Case No. 6 of 2015 arising out of CR No. I-463 of 2014 registered with Shivaji Nagar Police Station, on furnishing PR bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;
- iii) The applicant shall report Shivaji Nagar Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)