

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

CRIMINAL BAIL APPLICATION NO. 2678 OF 2018

Ganesh Suryakant Patil	...Applicant
Vs.	
State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1850 OF 2018**

Vishwas Narhari Patil	...Applicant
Vs.	
State of Maharashtra	...Respondent

- Mr. Aniket Nikam I/b Mr. Aashish Satpute, Advocates for the Applicant in BA 2678/18.
- Mrs. Pooja Sejpai a/w Ms. Akshata Desai I/b Nitin Sejpai for the Applicant in BA 1850/18
- Smt. A.A. Takalkar, APP for the State/Respondent.
- Mr. Nitin Jadhav SDPO Pen Police Station present.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd August, 2019

P.C. :

1. Both these applications are being decided by this common Order because they arise out of the same FIR and same investigation. The applicants in this Order are referred by their names i.e. applicant Ganesh Patil in BA No. 2678/18 and applicant Vishwas Patil in BA No. 1850/18. Both of them are seeking their

release on bail in connection with C.R. No. I 242 /2015 registered with Pen Police Station on 29/12/2015. Initially the offence was registered under Sections 395,397,347,412 of Indian Penal Code and under Sections 4 r/w section 25 of Indian Arms Act and subsequently offences under section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act (MCOC) Act were applied.

2. Prosecution case in brief is as follows:-

FIR was lodged on 29/12/2015 by one Gopalkrishna Gupta. He has stated that on that date at around 1.15 p.m. he was travelling in a rickshaw carrying Rs. 25,00,000/- in cash collected from Pen Branch of Bank of Maharashtra. He was going to Varsai Branch. At about 2.15 p.m. they reached near Labguard Company. Two motor cycles over took their rickshaw. There were three persons riding those two motor cycles. They got down from their motor cycles. One of them pointed out country made pistol towards the informant and others forcibly removed the brief case containing cash and also removed keys of rickshaw and thereafter went away from the spot. On this basis FIR was lodged at Pen Police Station.

3. Both applicants were arrested on 27/01/2016. The investigation was completed and sanction to prosecute the accused under sec. 3(2) of MCOC was granted on 04/07/2016.

4. Heard, Mr. Nikam, the learned counsel for the applicant Ganesh Patil and Mrs. Pooja Sejpai for the applicant Vishwas Patil. I have also heard learned APP Mrs. Takalkar for the State.

5. Mr. Nikam submitted that the applicant Ganesh was not identified in the identification parade. The First Informant has not identified him in Test Identification Parade. The evidence against him is in respect of the recovery of amount of Rs. 7,000/- and Rs. 2,000/- which the applicant Ganesh had paid to the tuition teacher of his daughter. There are CDR's i.e. call data record. However, according to Shri Nikam those calls are not incriminating.

6. Mrs. Sejpai submitted that besides the call data record against the applicant Vishwas, the other allegations are that amount of Rs. 40,000/- and mobile was recovered at his instance. He had buried that amount in a small hole in the ground. There

is another circumstance of producing amount of Rs. 28,000/- by his wife before the police voluntarily. Besides these two circumstances, there is nothing against this applicant and even these two circumstances are not incriminating.

7. Smt. Takalkar opposed these applications. She submitted that the offence is serious and provisions of MCOC Act are applied against the applicants. She submitted that apart from this offence there are four earlier offences registered against the applicants. According to her, the prosecution case, the present applicants are members of an organised crime syndicate.

8. I have considered these submissions. I have to consider involvements of the applicants in the present offence. As far as the recovery from the present applicant Ganesh is concerned, that amount of Rs. 9,000/- was recovered from two tuition teachers of his daughter. It cannot be said that it is an incriminating piece of evidence. Other evidence in respect of CDR at the most shows that he was in touch with other members including other accused, but that by itself does not mean that he has taken any part in committing robbery. Though affidavit filed

by APP shows that this applicant had kept watch and had given information to other accused about the location of the rickshaw, but there is no supporting material in the entire charge-sheet to show that he had kept such watch. There is nothing to connect the present applicants with robbery. Hence there is hardly any incriminating evidence against the present applicant Ganesh.

9. As far as applicant Vishwas Patil is concerned, circumstance that amount of Rs. 40,000/- was recovered at the instance of him cannot be directly connected with the alleged offence. The amount which was taken away was to the tune of Rs. 25,00,000/-. The amount which was recovered is comparatively a small amount. Prosecution is not in position to establish the connection with between the amount which is robbed and amount which is recovered at the instance of the applicant. Further the amount of Rs. 28,000/- which was produced by the applicant's wife cannot be held against present applicant. The amount was not recovered at the instance of the applicant Vishwas. The CDR record does not show involvement of the present applicants. In the entire charge-sheet there is no incriminating material showing

involvement of both these applicants. The prosecution is not in a position to establish the connection of the present applicants with the continuing illegal activities which are subject matters of the investigation. It is difficult for the prosecution to even allege that they had committed any offence much less offence punishable under MCOC Act. Even otherwise there are absolutely no incriminating antecedents against either of these applicants. The prosecution has recorded a statement under sec. 18 given by one accused Roshan. In his confessional statement this persons has not made any reference to the present applicants. Thus at this stage it can be safely observed that the applicants are not guilt of the offence under MCOC Act. It can also be observed that they are not likely to commit any other offence while on bail, though of course this latter part cannot be observed with certainty in any case. However, since there is absolutely no material against the present applicants in the present case, there is no impediment in granting bail to these applicants. Hence the order.

ORDER

1. The applicants are directed to be released on bail, in connection with C.R.No. I 242/2015 registered at Pen Police Station, Raigad on their executing P.R. Bond in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand Only) each with one or two sureties in the like amount.
2. Both the Applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)