

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

BAIL APPLICATION NO. 2945 OF 2018

Majhar Mehboob Shaikh ...Applicant

V/s

The State of Maharashtra ...Respondent

Mr. Aniket Nikam i/b. Vivek N. Arote for the applicant.
Smt. Geeta P. Mulekar, APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th December 2019

PC :

1. The applicant is arrested in connection with C.R. No. 153 of 2017, registered with Khadki Police Station, Pune for offences punishable under Sections 384, 385, 386 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short) and Section 4(25) of the Arms Act Section 37 (1) r/w. 135 of the Bombay Police Act. Subsequently, provisions of Maharashtra Control of Organised Crime Act, 1999 ('MCOC' for short) were invoked viz., under Sections 3(1) (ii), 3(2) and 3(4).

2. The case of the prosecution is that the complaint was filed by Sagar Aaher alleging that on 16.06.2017, at about 12.00 p.m., informant was keeping clothes of children for

selling near PMT bus stop at Khadki Bazar. Altaf Khan came there and told informant that Rabbil Bhai had sent him directed him not to keep his clothes at that place. At about 2.15 p.m., the accused Rajik Shaikh, Majhar Shaikh, Mohammed Bagwan approached complainant and threatened him. They also questioned him why he did not pay ransom and that Rabbil had demanded money, and threatened him. Thereafter, Rajik Shaikh and applicant held hands of complainant and he was slapped by Rajik Shaikh. The applicant and other accused abused and threatened the complainant. It is further alleged that 7 days ago Rabbil, Rajik, Majhar, Mohammed Bagwan, Altaf Khan had come with chopper. Rabbil demanded 'hafta' from complainant. The victim Mohan was assaulted for not paying money by first / kick blows. The accused held sharp weapon on applicant and demanded Rupees Ten Thousand. The Mohan parted amount of Rupees Two Thousand and complainant gave Rupees Two Thousand. The F.I.R. was registered. The applicant was arrested on 27th June, 2017. Investigation proceeded. Approval was obtained for application under the MCOC Act. Sanction was granted to prosecute the accused.

3. Learned Advocate for the applicant submitted that the applicant is in custody from the date of his arrest. The trial has not commenced. The provisions of MCOC Act are not applicable. There are no criminal antecedents against the applicant. The applicant is not involved in other case with gang leader. The confessional statement of the accused is exculpatory.

4. Learned APP submitted that the applicant is involved in crime. He had accompanied the co-accused. Demand of extortion and threats were issued by the applicant with other accused. Several cases are registered against gang leader. Accused were indulging in unlawful activity. The offence is of serious nature. In view of seriousness of offence, approval was sought under the provisions of MCOC Act. Approval was granted. Investigation is completed. Sanction was granted to prosecute the accused for the offence under the MCOC Act. Confessional statement of co-accused has been recorded.

5. I have perused the documents on record. The incident in question had occurred in 2017. The applicant was arrested and since then he is in custody. Undisputedly, this

is the only case against the applicant. Statement of Mohan Kantikanti was recorded on 17.06.2017. He has stated that several persons like him were vendors. Accused Rabbil was selling 'Kachi Dabeli' in PMT bus stand area. Rabbil was earning money from vendors by allowing them to do business on open ground. He formed his gang. In 2016 offence was registered against Rabbil. Rajik is brother of Rabbil. Other associates of Rabbil are Mohammed Bagwan, Thomas Swami, Abid Shaikh, Aniket Shingare, Haider Ali, Rahibar Shaikh, Irfan Khan, Mohasin Sayyed, Farukh Shaikh, Tausif Shaikh, Sonya, Wasim Aman, Anis, Altaf, Irfan Shah, Ajay Pillai, Batatya and Akash Waghmare. He has not referred to name of applicant. The involvement of applicant is referred to in the present case. The witness then referred to incidents referred by complainant. Statement of Prakash Pal also refers to above incident. He has stated about past activity of Rabbil and formation of gang by him. He has referred to several persons as member of Rabbil's gang. The name of applicant is not referred as member of gang. Statement of other witnesses are similar. For past activities applicants involvement as member of gang has not been referred to. Statement of Rahul Miral, Mohammad Riyaj and others were recorded after arrest of applicant. They have

referred to past activities of 2016 and there is no mention of applicant on the basis of current incident. Applicant was referred as associate of Rabbil. The applicant is not involved with the alleged gang leader in any other case. The complaint of Sagar Aaher was recorded on 16th June, 2017. The applicant was allegedly involved in threatening and assaulting the complainant with fist blows.

6. Five cases were registered against Rabbil in 2012, 2013, 2014 and 2016. The offences were under Sections 307, 394, 326, 353. The last case prior to the F.I.R. is of 2016. The applicant is not concerned with those cases. The confessional statement of the co-accused was recorded under Section 18 of MCOC Act. The said statement is exculpatory in nature. The gang leader is Rabbil. He has stated that on 16th June, 2017, offence was registered against him, his brother Rajik Khan, Mohammad Bagwan and Altaf Khan. He further submitted that since offences were registered against him from 2012 to 2014, the businessman were under his fear. Several other persons have started demanding money in his name. Offences registered against him are pending in Court. Thus, confessional statement of the gang leader is exculpatory in

nature. The accused has not stated that he is operating any gang or continuing unlawful activities. The accused has not stated that the applicant is a member of crime syndicate and that he is involved in continuing unlawful activities. Admittedly, no other case has been registered against the applicant. The applicant is in custody from 27th July, 2017, i.e. almost for period of two and half years. I have also perused the proposal and approval under Section 23(1) of MCOC Act as well as the sanction granted for prosecution under the provisions of the said Act. Considering the statements on record and the contents of the aforesaid documents the bar envisaged under Section 21(4) of MCOC Act would not preclude the Court from granting bail. Considering these circumstances, case for grant of bail is made out.

ORDER

- (i) Bail Application No. 2945 of 2018, is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 153 of 2017, registered with Khadki Police Station, Pune, on furnishing P.R. Bond in the sum of Rs.50,000/-, with one or more sureties in the like amount;

(iii) The applicant shall report Khadki Police Station, Pune, once in a month on every first Saturday between 10 a.m. to 12 noon till further orders;

(iv) The applicant shall not tamper with evidence and shall attend Special Court proceedings regularly, unless exempted by the Special Court for some reason;

(PRAKASH D. NAIK, J.)