IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3000 OF 2018

Harish Shyamlal Gyanchandani … Applicant
Vs.
State of Maharashtra … Respondent
…
Mr. Ashok P. Mundargi, Sr. Advocate a/w Mr. A.R. Gole I/by Mr. Ritesh Ratnam for the applicant.
Mr. A.R. Kapadnis, APP for the Respondent-State.
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CORAM : PRAKASH D. NAIK, J.
DATE : 12th FEBRUARY, 2019.

P.C.

1. The applicant is seeking bail in connection with CR No. 326 of 2018 registered with Malad Police Station and at C.R. No. 36 of 2018 with CID, CBD on transfer for investigation for the offence punishable under Sections 387, 120(B) of the Indian Penal Code read with Sections 3 & 25 of the Arms Act. Subsequently, the investigation was conducted by the D.C.B, C.I.D. The provisions of Section 3(1)(ii) & 3(4) of the MCOC Act were applied.

2. The case of the prosecution is that informant was running hotel guest house in the name of 'Accord'. One Ali invested a sum of 5000 Dirhams (Rs. 50 Lacs) in the informant's business. It is

alleged that accused No.1 called the informant and stated that money invested by Mr. Ali was his money and asked the informant to pay back money alongwith interest. Informant made inquiries with Ali about the same and he denied that amount belongs to accused No.1. Thereafter Ali was murdered. Informant received repeated threat calls from accused No.1. On 30th June, 2013 the applicant had received a call on his mobile from accused No.1 and he demanded Rs.50,00,000/- and threatened that for not fulfilling demand he would be killed. Informant sought time. On 21st August, 2017 informant got a whatsapp message of threat which he ignored. Informant started getting whatsapp calls which were also ignored by him. In August, 2017, the informant again received a call from a person who identified himself as Hemant an accomplice of Anees Ibrahim and enquired about the money and further threatened the informant to meet him at Malad Link Road. On 27th November, 2017 the informant received threats by whatsapp messages. On 23rd May, 2018, again call was received by the informant from person who identified himself as Sameer Jagtap and thereafter the first Information Report was lodged.

3. The applicant was arrested on 27th June, 2018. Investigation is completed and the chargesheet has been filed. Learned counsel

for the applicant submitted that there is no evidence to show the involvement of the applicant in the crime. Provisions of MCOC Act are not applicable to the applicant. The prosecution has not been able to show any nexus of the applicant with the crime syndicate. There is no evidence to link the applicant with the accused No.1 and the other accused allegedly involved in threatening the complainant. Applicant at the most is dealing in Hawala transaction. The amount Rs. 3,55,000/- was received by way of Hawala transaction by the applicant through one Raj Manglani. However, there is no cogent evidence on record to establish that the applicant had a knowledge that the said amount was connected with the alleged crime and that it would be utilized in commission of crime. Learned counsel for the applicant relied upon the decision of the Hon'ble Apex Court in *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra*[1] and decision of this Court in Criminal Bail Application No. 476 of 2013 in the case of *Kawalnayan Vazirchand Pathreja Vs. the State of Maharashtra.*

4. Learned APP submits that the statement of the witnesses were recorded which indicates that the amount was connected with crime. It is submitted that the statements of the employees of

1 (2005) 5 SCC 294

the applicant also fortifies the transaction and it has been stated by them that the amount was handed over at the instructions of the applicant to the person who had collected the same. It is submitted that the evidence on record is sufficient to invoke the provisions of MCOC Act. The prosecution has filed an affidavit to oppose the application for bail.

5. Admittedly, there are no criminal antecedents against the applicant. There is no evidence to link of the applicant with the crime syndicate allegedly involved in threatening the first informant. There is no evidence to establish any nexus of the applicant with the extortion threats issued by the co-accused to the complainant. At the most the amount was transmitted through Raj Manglani who is also involved with the applicant in the Hawala transaction and beyond that there is nothing on record that the applicant had any knowledge about the amount being utilized in the crime. Statement of the applicant's employee indicate that amount was being handed over to the persons on instructions of the applicant. However, the said statement and the evidence collected by the Investigating Officer is not sufficient to show the nexus of the applicant with the crimes indicate that there is nothing on record to show that the applicant is member of the

gang involved in the crime. In the light of principles enunciated in the case of *Ranjitsing Brahmanjeetsing Sharma (supra)* and in the light of evidence on record collected by the Investigating Machinery qua applicant there is no impediment in granting bail inspite of rigors of Section 21(4) of MCOC Act.

ORDER

i. Criminal Bail Application No. 3000 of 2018 is allowed;

ii. Applicant is directed to be released on bail in connection with CR No. 36 of 2018 investigated by CID, CBD which is subject matter of MCOC Special Case No. 16 of 2018 pending in the court of Special Judge under MCOC Act, Greater Mumbai on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

iii. Applicant shall report to the DCB Anti Extortion Cell once in a month on first Saturday of the month between 11 a.m. to 1 p.m. till further order;

iv. Applicant shall not tamper with the prosecution witnesses;.

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

vi. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)