

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3352 OF 2018

Aanand Bhimu Jadhav, Age 21 years,
Occ.Labour, R/o.At Room No.2,
Jiwan Sheth Chawl, Gundawali,
Tal.Bhiwandi, Dist.Thane.

Applicant

versus

Senior Inspector of Police and another

Respondents

WITH

CRIMINAL BAIL APPLICATION NO.1510 OF 2018

Genusing Somlunayak Chauhan, Age 33 years,
R/o.Post Kanyakolur, Japa Nayak Tanda,
Tal.Sahapur, District Yadgir, Karnataka State.

Applicant

versus

The State of Maharashtra

Respondent

WITH

CRIMINAL BAIL APPLICATION NO.1924 OF 2018

Kiran Srinivas Chavan, Age 30 years,
R/o.House No.4-140, Vijay Laxmi Street,
Humnabad, Dist.Bidar, Karnataka.

Respondent

versus

The State of Maharashtra

Respondent

Mr.Balwant Salunkhe for applicant in BA No.3352/2018.

Mr.Santosh M. Deshpande for applicant in BA No.1510/2018.

Mr.Aabad Ponda I/by Karma Vivan for applicant in BA
No.1924/2018.

Mr.Prashant Jadhav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th February 2019

PC :

1. The applicants in all these applications are seeking bail under Section 439 of Code of Criminal Procedure, 1973 in connection with CR No.I-07 of 2017 registered with Kongaon Police Station for offences under Sections 395, 365, 201, 120B, 411, 412 of Indian Penal Code r/w Sections 3(I),(II), 3(2), 3(4) of Maharashtra Control of Organized Crime Act ('MCOC Act'). The applicant in Bail Application No.3352 of 2018 was arrested on 13th February 2017. The applicant in Bail Application No.1510 of 2018 was arrested on 8th March 2017, whereas applicant in Bail Application No.1924 of 2018 is arrested on 8th March 2017.

2. The prosecution case is that the complainant is resident of Kalyan, District Thane. He is employee of company viz Proconnect Supply Solutions Limited as Assistant General Manager. The said company is having its godown at Gala Nos.1 to 10, Building No.E/6, behind Cipla Company, Pimpalas Road, Pimplas Gaon, Tal.Bhiwandi wherein electronic goods of various companies are stored. About 50 persons are working in the said godown. Several security guards are deputed for security in the said godown. On 10-1-2017 the complainant received telephonic call from the security guard informing him that theft has taken place in the godown of the company. The complainant immediately rushed to the spot. On reaching the godown it was revealed that shutter no.11 of the godown was broken and the accused had committed theft of mobile phones, I-Pods, Chargers and USB cables valued at Rs.42,19,490/-. The complainant thereafter lodged complaint in respect of said theft with Kongaon Police Station against unknown persons. The offence

as stated hereinabove was registered. The spot panchanama was recorded. Subsequently the accused were arrested. Approval was sought for application of provisions of MCOC Act in accordance with Section 23(1) of the said Act. Sanction was accorded for application of provisions of MCOC Act. The applicants were remanded to custody from time to time. On completing investigation charge sheet has been filed.

3. Learned counsel representing the accused submitted that the provisions of MCOC Act are not attracted in the present case. There is no evidence to show that the applicant were the members of organized crime syndicate. The prosecution is relying upon the confession of one of the accused Santosh Chavan recorded u/s 18 of MCOC Act. It is a weak piece of evidence and requires corroboration. Considering the nature of evidence against applicants, embargo enunciated u/s 21(4) of MCOC Act is not attracted against applicants.

4. Learned counsel for applicants in respective applications submitted that there is no cogent evidence against applicants. The provisions of MCOC Act are not applicable against them. The co-accused Laxman Chavan, Sanjaykumar @ Munna Babu Bula were granted bail in Bail Application Nos.571 of 2018 and 945 of 2018.

5. Learned counsel for applicant in BA No.3352 of 2018 submitted that there is no evidence to establish his link with the crime syndicate. There are no antecedents against him. The prosecution is relying on the confession of the co-accused which is not corroborated by any evidence. It is further submitted that there is no identification parade identifying the applicant as the person

who is involved in the crime. Except recovery of three mobile phones at the instance of applicant, there is no evidence to show his complicity in the crime. The advocate for applicant in Bail Application No.1510 of 2018 submitted that there is no evidence of identification parade against him and there is no recovery of any nature against him. Even there is no CDR record to show his involvement in the crime. There is no evidence of his participation in the crime and the prosecution is merely relying on the confessional statement of co-accused Santosh Chavan. Whereas, advocate for applicant in Bail Application No.1924 of 2018 submitted that there is lack of evidence to establish his connection with organized crime syndicate. It is submitted that at the most the involvement of applicant can be attributed to the charge of receiver of stolen property. The prosecution has not been able to show that the applicant is member of organized crime syndicate to invoke the provisions of MCOC Act. It is submitted that the applicant is arrested on the basis of statement of Kishor Budhwant. It is submitted that confessional statement of Santosh Chavan in fact exonerates the applicant from being involved in the crime. The case of prosecution with reference to exchange of cash amount towards sale of mobile phones cannot be accepted because the alleged act had occurred during the period of demonetization and it would not have been possible to arrange cash as indicated in the statement of witnesses. It is further submitted that the evidence of witnesses relied upon by prosecution suffers from various infirmities in the nature of contradiction and it is difficult to accept the said evidence. It is submitted that there is no parade to corroborate the involvement of applicant in the crime. He is in custody from the date of arrest.

6. Learned APP on the contrary submitted that there is evidence to show involvement of applicants in crime. It is submitted that the prosecution is relying on the confessional statement of co-accused Santosh Chavan recorded u/s 18 of MCOC Act. It is submitted that the said accused has shown involvement of accused in the crime. It is further submitted that applicant in Bail Application No.3352 of 2018 was instrumental in bringing the tempo. It is submitted that in the confessional statement of the co-accused it is indicated that the applicant in Bail Application No.3352 of 2018 had brought tempo which was used in commission of crime. It is further submitted that one another case is registered against applicants in Bail Application No.1510 of 2018 and 1924 of 2018. However, learned counsel representing applicants submitted that in the said case, the applicants were arrested after the arrest was shown in present case. The said case was registered against unknown persons and the applicants are released on bail. As observed hereinabove, as far as applicant in Bail Application No.3352 of 2018 is concerned, there is no identification parade. Except recovery of three mobile phones, there is no other evidence against him. Similarly as far as applicant in Bail Application No.1510 of 2018 is concerned, except confessional statement recorded u/s 18 of MCOC Act of co-accused, there is no evidence against the applicant. His role in the crime is not established. As far as applicant in Bail Application No.1920 of 2018 is concerned, the prosecution has relied upon recovery of 11 mobile phones. However, as stated above, there are discrepancies in the evidence of witnesses relied upon by prosecution. There is nothing on record to link the applicant as the person who is the member of organized crime syndicate. There are no other cases against him except the case in which he was arrested after he is

shown arrested in the present case to show that he was involved in the activities of organized crime syndicate. The confessional statement of the co-accused also does not show any corroborative circumstance against the said applicant as person who is involved in any crime. The applicants are in custody from the date of arrest. Investigation is completed and charge sheet is filed.

7. Considering the facts and circumstances of the case and nature of evidence against the applicants in these applications, the rigors of Section 21(4) of MCOC Act would not be attracted in present cases. Hence, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3352 of 2018, Criminal Bail Application No.1510 of 2018 and Criminal Bail Application No.1924 of 2018 are allowed and disposed off;
- (ii) The applicants in these Criminal Bail Applications be released on bail in connection with CR No.I-07 of 2017 registered with Kongaon Police Station, on their furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants in these Bail Applications are directed to report Kongaon Police Station once in a month on every first Saturday between 10 am and 12 noon till conclusion of trial;
- (iv) The applicants in these Bail Applications shall attend the Trial Court regularly on dates of hearing of the case, unless exempted by the said Court for some reason.

(PRAKASH D. NAIK, J.)