IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3376 OF 2018

Sonu Yogendra Jalan @ Sunil Malad
@ Sonu Malad ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. A. H. H. Ponda I/b Mr. Ashish Raghuvanshi for the Applicant

Mr. S. S. Hulke, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 5th JULY 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 93 of 2018 registered with the Thane Nagar Police Station, Thane, for the alleged offences punishable under Sections 363, 384, 386, 387 r/w 34 of the Indian Penal Code (`IPC'); under Sections 6, 28 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Organized Crimes Act (`MCOC Act').

3 Learned counsel for the applicant submitted that the applicant has been falsely implicated in the said case, as he had recorded some conversation, which did not go down well with the Police Officer, pursuant to which, he was threatened that he would be falsely implicated in a case. He submitted that the alleged incidents are of January 2018, whereas, the FIR was lodged on 1st June 2018, after almost 6 months and there is no explanation for the said delay. He further submitted that the FIR and the charge-sheet would both reveal the falsity of the prosecution case, regarding an alleged Mortgage Deed, demand of money, etc. Learned counsel for the applicant has, in detail, pointed out that the CDR record shows that calls were infact being made by the complainant to the applicant. According to the learned counsel, the applicant has absolutely no connection with the gangster Ravi Pujari. He further submitted that there is no CDR record or any other material to connect the applicant with the gangster Ravi Pujari.

4 Learned A.P.P has filed an affidavit of Nivrutti Kadam, ACP, posted to Crime Branch, Thane City. Learned A.P.P relied on the

confessional statement of the applicant. He submitted that in the course of investigation, one fake revolver with fake cartridges, used for kidnapping and extorting the complainant, were recovered at the instance of the applicant. He further submitted that there are cases under the Gambling Act and Indian Telegraphic Act, which are pending as against the applicant.

5 Perused the papers. The complainant is in the business of diamonds and runs his business in the name and style of `M.V. Jems'. The complainant has another business which is run in the name and style of `Swadya Spices Pvt. Ltd.'. According to the complainant, due to his business activities, he came in touch with Ketan Tanna @ Raja and the applicant. According to the complainant, in the first week of January 2018, when he was at his shop, Swadya Spices Pvt. Ltd. at Thane, he received a call at 1:30 p.m. on his cell phone from the applicant from his mobile. The complainant has alleged that the applicant demanded Rupees Three Crores from him; that when the complainant asked the applicant the purpose for demanding Rupees Three Crores, the applicant allegedly told him that gangster Ravi Pujari had asked him to demand the said amount from the complainant. The applicant is also alleged to have threatened the

complainant not to disclose the said call and extortion demand, pursuant to which, he did not mention the same to anyone. The complainant has further alleged that after about 4 to 5 days, the applicant and co-accused-Ketan Tanna met him at Thane and demanded Rupees Three crores. The said persons are alleged to have told that they had relations with gangster Ravi Pujari. According to the complainant, he informed them that he did not have so much money to give, pursuant to which, the applicant and co-accused showed him a gun, forcibly made him sit in a car, took him to Malad, where he was freed and later threatened, not to disclose the same to any person. The complainant has further alleged that the applicant and his accomplices regularly threatened him to pay Rupees Three Crores. The complainant has further alleged that on 22nd January 2018, the applicant and his accomplices forcibly took him to the Sub-Registrar's Office, near Goregaon Telephone Exchange and got a Mortgage Deed for Rs. 11,00,000/- executed for his (complainant's) flat, situated at Kandivali (West). The accused are also alleged to have got a Power of Attorney executed in favour of Mr. Chirag Majlani. According to the complainant, due to the threats, he sold the said flat situated at Kandivali (West) and received a sum of Rs. 25,00,000/- as earnest money and paid the said amount to the applicant. It is alleged that the applicant asked him to arrange for the balance amount, as early as possible, pursuant to which, the complainant lodged the aforesaid complaint alleging various offences under the Indian Penal Code. During the course of investigation, police arrested the applicant and co-accused-Ketan Tanna. As there were more than one charge-sheet against the applicant as well as the gang leader, within the preceding ten years, MCOC was invoked and after obtaining sanction, the provisions of MCOC Act are added. During the course of investigation, it appears that statements of two witnesses were recorded, which reveal that the applicant, co-accused and the complainant had come to the Sub-Registrar's Office on 17th January 2017 at 5:30 p.m, and that a Power of Attorney was registered with respect to the complainant's flat in Kandivali. It is alleged by the prosecution that there is an eye-witness who had seen the applicant and co-accused threatening the complainant and taking a sum of Rs, 25,00,000/- on 20th May 2018 at Malad, Mumbai. The applicant's confession under Section 18 of the MCOC Act was also recorded and after investigation, charge-sheet was filed as against the applicant and co-accused.

6 The alleged incidents are of January 2018, when the applicant is alleged to have called the complainant and demanded ransom, whereas, the FIR is of 1st June 2018. The complainant-Ritesh Shah has alleged that the applicant had called him in the first week of January 2018 from one mobile number and asked him to pay Rupees Three Crores as ransom money, which he refused to pay, pursuant to which, after 4 to 5 days, the applicant went to Thane and made him speak to Ravi Pujari on the phone; that on 22nd January 2018, at gun point, the applicant along with three others forcibly abducted him (complainant) and took him to the Sub-Registrar's Office to execute a Mortgage Deed for Rs. 11,00,000/- and on the very day, a Power of Attorney was also prepared in the name of Chirag Majlani and that though the Power of Attorney was executed by him (complainant) in favour of Chirag, no payment of Rs. 11,00,000/- was received. According to the complainant, the purpose of abducting him, was to secure the money for Ravi Pujari, by mortgaging the property and that Chirag was a front in the said transaction. *Prima facie*, the documents on record in the charge-sheet are in variance with the complainant's allegation in the FIR. It is pertinent to note, that although the complainant has alleged that the applicant called him in the first week of January 2018 and asked

him to pay Rupees Three Crores as ransom money, which the complainant refused, the CDR record reveals that in the first week of January 2018, in particular, on 3rd January 2018, it is the complainant who had phoned the applicant twice at 12:56:06 hrs. and 12:56:47 hrs. It appears that the applicant called the complainant thereafter at 18:54 hrs. on the very day i.e. on 3rd October 2018. According to the FIR, there was a demand from the applicant in the first week of January, followed by a threat (4 to 5 days later) and thereafter, abduction on 22nd January 2018, however, the CDR (between the complainant and the applicant), show that in January 2018, the complainant had called the applicant several times on 3rd, 5th, 7th, 16th, 17th and 23rd January 2018. It also appears that the complainant had sent a message to the applicant on 12th January 2018. The applicant also appears to have called the complainant several times in January. It is not in dispute that the relations between the applicant and the complainant were cordial and that they were friends. Further, in February 2018, it appears that the complainant called the applicant on 8th, 17th, 19th, and 27th February 2018 and also sent SMSs. However, there is no mention of the calls exchanged between them, after the first week, in the FIR, i.e. whether there were threats and the reason for so many calls between them. It is not the case of the complainant that the applicant continued to call him for extorting money thereafter i.e. after the first week of January 2018, then why the complainant called the applicant thereafter i.e. January and February 2018, is unclear. According to the complainant, only a single threatening call was made by the applicant to him in the first week of January and a visit thereafter, whereas, the CDR records show that there were several calls exchanged between the parties after the first week of January right upto February and March and that there is no mention as to why these calls were made subsequently, either by the applicant to the complainant or by the complainant to the applicant.

7 According to the complainant, after the first threatening call made in the first week of January 2018, by the applicant, the applicant visited his house at Thane after 4 or 5 days and asked him to speak to Ravi Pujari. The CDR records produced by the prosecution of the applicant of the first week of January and 4 to 5 days thereafter, do not show the location of the applicant in Thane, on the days mentioned by the complainant. The learned A.P.P is unable to show the applicant's location at Thane, as per the CDRs and as alleged by the complainant.

8 As far as the allegation made by the complainant, that the applicant pointed a gun at him on 22nd January 2018 and thereafter, along with others, forcibly abducted him and took him to the Sub-Registrar's Office to execute a Mortgage Deed of Rs. 11,00,000/- i.e. on 22nd January 2018, it is pertinent to note, that the said Mortgage Deed, allegedly executed has not been produced by the prosecution. It appears that what was executed was a Power of Attorney given by the complainant in favour of Chirag Majlani on 17th January 2018 and not on 22nd January 2018. In the entire charge-sheet, there is no Power of Attorney dated 22nd January 2018, as alleged by the complainant. Admittedly, the Power of Attorney given by the complainant in the name of Chirag is a registered document, which is registered at Goregaon on 17th January 2018 and the same records the presence of Chirag and the complainant. The statement of Chirag Majlani recorded during the course of investigation shows that the Power of Attorney was given to him (Chirag) for a totally unconnected business dealing between the applicant, himself and the complainant. Infact, there is no Mortgage Deed executed either on 17th or 22nd January 2018, which is the genesis for lodging the aforesaid complaint. According to the prosecution, it is at gun point, that the applicant took the complainant and

got the Mortgage Deed executed, yet, there is no Mortgage Deed produced by the prosecution on record.

9 The complainant does not talk about his visit to the Sub-Registrar's office on 17th January 2018 for executing the Power of Attorney and there is no Power of Attorney of 22nd January 2018 on record. According to the complainant, he did not receive Rs. 11,00,000/-, though he executed the Power of Attorney in favour of Chirag Majlani, however, the charge-sheet reveals that on 22nd January 2018, an amount of Rs. 11,00,000/- was received by the complainant vide cheque from Chirag Majlani's account. The bank statement of the said transaction is part of the charge-sheet, showing transfer of Rs. 11,00,000/- from Chirag's account into the complainant's account. The said entry *prima facie* falsifies the complainant's allegation that he did not receive Rs. 11,00,000/- from Chirag. It appears that later, after 23 days, the complainant, in his further statement dated 23rd June 2018, has explained the 11 lakhs entry in his account, coming in by cheque, but being withdrawn by him (complainant) and returning the said amount, in cash, to the applicant.

10 A perusal of the complainant's bank statement, which is annexed to the charge-sheet, is to the contrary. There is no cash withdrawal as alleged by the complainant. What the bank statement shows is that, the said amount of Rs. 11,00,000/- was transferred by the complainant in the account of two entities i.e. Navkar Corporation on 22nd January 2018 i.e. Rs. 6,00,000/- and Swadya Spices Enterprises on 23rd January 2018 i.e. Rs. 5,00,000/-. Admittedly, Swadya Spices Enterprises, is an entity owned by the complainant, which sells masalas. According to the complainant, the purpose of his abduction was to secure money for Ravi Pujari by mortgaging the property i.e. the complainant’s flat and that Chirag was a front for the said transaction. Admittedly, the alleged Mortgage Deed executed by the complainant before the Sub-Registrar is not a part of the charge-sheet. The purpose of extortion was to secure the Mortgage Deed, pursuant to which, he was abducted either on 17th or 22nd January 2018. What is evident from the FIR, which was registered on 1st June 2018 after six months of alleged abduction and execution of Mortgage Deed, that there is no Mortgage Deed on record, as alleged, although there was a Power of Attorney giving a right to Chirag Majlani to admit execution of the Mortgage on behalf of the complainant.

11 As far as Section 18 confession is concerned, it has been retracted on the very same day. The case in the confessional statement of the applicant appears to be contrary to what is stated by the complainant in the FIR. The prosecution has also not been able to throw light on any other material *qua* the applicant. Learned A.P.P has not been able to point out any calls exchanged between applicant and gangster Ravi Pujari or any other material pointing to the applicant's complicity. Learned A.P.P does not dispute that there is no Mortgage Deed on record. He is also unable to explain the discrepancies as noted above.

12 No doubt, there are antecedents, in particular, under the Gambling Act, against the applicant, however, in the present case, *prima facie,* it is difficult to come to the conclusion, having regard to what is stated herein aforesaid, that the applicant is guilty of the offences with which, he is charged.

13 Considering the aforesaid, the application is allowed on the following terms and conditions:

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;

(ii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iii) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial.

14 The application is accordingly disposed of.

15 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

16 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.