IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 311 OF 2019

Shanti Laxman Giri ...Applicant
V/s.
The State of Maharashtra
(at the instance of Yerwada
Police Station, Pune) ...Respondent

* * * *

Mr. Shirish Gupte, Senior Advocate i/by. Mr. Karl Rustomkhan, Advocate for the applicant.

Smt. Sharmila Kaushik, APP for State.

Mr. Satish Walke, API attached to ACP Shivaji Nagar Crime Branch, Pune present.

CORAM : SANDEEP K. SHINDE, J.

ORDER RESERVED ON : 10TH JANUARY, 2020.

ORDER PRONOUNCED ON : 17TH FEBRUARY, 2020.

P.C. :

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 read with Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as “the MCOC Act”) for seeking bail in FIR registered by the Yerwada Police Station bearing C.R. No. 757 of 2017 for the offences punishable under Sections 370 and

370 (A) read with Section 34 of the Indian Penal Code alongwith Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "PITA Act") and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

2. The first informant, Shital Dayanand Bhalekar was working as Assistant Police Inspector in the Social Security Department of the Crime Branch, Pune City. On 18th September, 2017 the first informant received an information that one person namely, Rahul @ Raju was operating a prostitution racket across various hotels in and around Pune City. Therefore, through bogus customer, the first informant and their associates planned a meeting through a telephone conversation with Rahul @ Raju for the purpose of availing his services. Accordingly, the bogus customers were sent and the first informant and her associates carried out a raid at Hotel, Hyatt at Pune. In the course of raid, the first informant and her associates found and rescued three women who represented themselves as prostitutes to the bogus customers. Subsequently, on 19th September, 2017 the Yerwada Police Station

registered FIR bearing C.R. No. 757/2017 for the offences punishable under Sections 370, 370A read with Section 34 of the Indian Penal Code alongwith Sections 3, 4 and 5 of the PITA Act.

3. During the ongoing investigation of Crime No. 757/2017, Lashkar Police Station, Pune on the basis of information received that another prostitution racket was being operated at a place called, Arora Towers Camp at Pune, an FIR bearing C.R. No. 238/2017 for the offences punishable under Sections 370, 370A, 109, 114 of the Indian Penal Code alongwith Sections 3, 4 and 5 of PITA Act came to be registered on 7th November, 2017. Upon raiding the residential premises of Ganesh Langda, investigating authorities found the present applicant alongwith four other accused persons at the residential premises and thereby they arrested him on 13th November, 2017, in connection with FIR bearing C.R. No. 238/2017.

4. That during the course of the investigation in the second FIR, it was revealed that Ganesh Langda was also involved in the case

arising out of FIR No. 757/2017. Ganesh Langada and applicant were also arrested on 28th November, 2017 in C.R. No. 238/2017 of Yerwada Police Station having found both the cases i.e. C.R. no. 757/2017 and C.R. No. 238/2017 arose out of the same modus-operandi and that both the said rackets were being operated under the same leadership.

5. Subsequently, on 8th May, 2018 Assistant Commissioner of Police, Crime-II, Pune City submitted a proposal seeking sanction for prosecution under Section 23(2) of the MCOC Act which was granted on 16th May, 2018 by the Additional Director General of Police and Commissioner of Police, Pune City. Upon completion of the investigation on 18th May, 2018 the Investigating Authority submitted the chargesheet to the Special Court under the MCOC Act at Pune.

5. The applicant had preferred a Bail Application before the Special Court under the MCOCA which came to be registered vide order dated 29th December, 2018. The applicant therefore approached this Court for exercise of its

jurisdiction under Section 439 of the Code of Criminal Procedure read with Section 21(4) of the MCOC Act for seeking release on bail.

6. Heard Mr. Gupte, learned Senior Counsel for the applicant and Mrs. Kaushik, learned APP for the State. Perused the final report.

7. It is prosecution's case that, one Krushna Singh Surendra Singh, a gang leader runs an Organised Crime Syndicate involving different members had singly and jointly committed several cognizable offences defined under the PITA Act i.e. living on the earnings of prostitution, procuring, inducing or taking persons for the sake of prostitution, detaining persons in the premises where prostitution is carried out, engaging the trafficked women and girls for sexual exploitation. The present applicant alongwith the other accused in the crime, have been working in different roles in the syndicate of which Krushna Singh is the kingpin. The prosecution has submitted that, in so far as the requirements of attracting MCOCA is concerned, the said offences committed conjointly

by the syndicate which are punishable with imprisonment of three years or more alongwith having more than one chargesheet registered against the syndicate in the preceeding ten years wherein the Court had also taken cognizance have been met. Hence, the provisions of Section 3(1)(ii), 3(ii) and 3(iv) of the MCOC Act were invoked. It is prosecution's case that evidence collected during the course of the investigation of the said offences has clearly established that Krushna Singh Surendra Singh and his accomplices, twenty-three in number, in furtherance of their activities of their Organised Crime Syndicate had committed these offences with a view to gain pecuniary benefits and other advantages for themselves by use of intimidation or coercion.

8. Mr. Gupte, learned Senior Counsel appearing for the applicant, submitted that the applicant hails from Assam and had come to visit his relative namely, Ganesh Langada @ Bhuvan Kumar Beri on 12th October, 2017 who had then provided accommodation to the applicant. That for establishing this fact, copy of the ticket has been

relied on. Mr. Gupte, therefore submits, such offences wherein the applicant has been arraigned as an accused was registered on 7th November, 2017 but the accused came to Pune only on 12th October, 2017 and therefore the applicant could not have a possible connection with the crime registered with Yerwada Police Station on 19th September, 2017. It is therefore submitted that, the applicant had no knowledge about the nature of business being carried out by his relative, namely, Ganesh Langada and applicant was merely using his residence for his personal use. Mr. Gupte, submitted when the second FIR being C.R. No. 238 of 2017 was registered and in the course of the investigation when the residential premises of Ganesh Langada were searched, the authorities found the applicant at the said residential premises and he came to be arrested only on the presumption that he was helping Ganesh Langada, the absconding accused in carrying out the prostitution business. Mr. Gupte, further submitted that applicant has no nexus with the business of Ganesh Langada and the mobiles recovered from the applicant were not belonging to him. Mr. Gupte, further submitted that, there is no material on record even to suggest that the applicant had ever rendered assistance in commission of organised crime. Mr. Gupte, therefore submitted, to attract the offence under Section 3(2) of the MCOCA, the applicant must have direct nexus with the crimes committed by an Organised Crime Syndicate. Nextly, Mr. Gupte, has also relied on the judgment of the Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and another reported in (2005) 5 Supreme Court Cases 294** wherein he relied on para-22 of the said judgment in support of his contention which reads as under :

> *"22. The interpretation clause as regard the expression "abet" does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under*

Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organised crime or organised crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr. Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision.

The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organised crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organised crime syndicate, Section 24 *postulates a situation where a public servant renders any help or support both before or after the commission of an offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act."*

9. Mr. Gupte, therefore submitted that even if the prosecution's version is taken on its face value of the applicant's alleged association with Ganesh Langada, it could not bring the case within the ambit of Section 3(ii) of the MCOC Act. Mr. Gupte, further submitted that, there is no material on record, constituting reasonable grounds for believing that he is guilty of the offences and further in absence of any antecedent, the applicant is not likely to commit any offence if released on bail.

10. On these grounds, applicant's enlargement on bail is sought.

11. Learned APP, has relied on the final report, as well as, Affidavit of Mr. Bhanupratap

Shankarrao Garge, Assistant Commissioner of Police and opposed the Bail Application. I have perused the final report.

12. Evidence on record shows that, in the house search of Ganesh Langada, in all, nineteen mobiles and five laptops were seized, out of which three mobiles were found on the person of the applicant. The numbers ending with of these mobiles are 551, 160 and 823. Sim Cards of these mobiles were not registered in the name of the applicant but in the name of Ram Giri (numbers ending in 551 and 160) and Dilip Giri (number ending in 823). After seizing the laptops and the mobiles, a google search panchanama was drawn which showed that applicant's numbers which were found on his person were displayed across various websites under fake names for prostitution services. The investigation revealed that the mobile number 9960425551 (recovered from the person of the applicant) was used for call girls and escort services on the following websites for the business of prostitution:

(i) Pune.cracker.com

(ii) https://mlmad.in

(iii) www.escortwiz.com

(iv) https://forums.adobe.com

(v) india.backpage.com

(vi) www.prefree.org.

(vii) pune.locanto.net

(viii) mlmadz.com

13. Yet another number 7798616160 found on the person of the applicant when verified on google search was found to be used for providing call girls and escort services on the following websites for the business of prostitution :

(i) www.sciio.in

(ii) https://mobile.yuplee.in

(iii) www.pinterest.com

(iv) www.nightangel.net.in

(v) www.nightangel.net

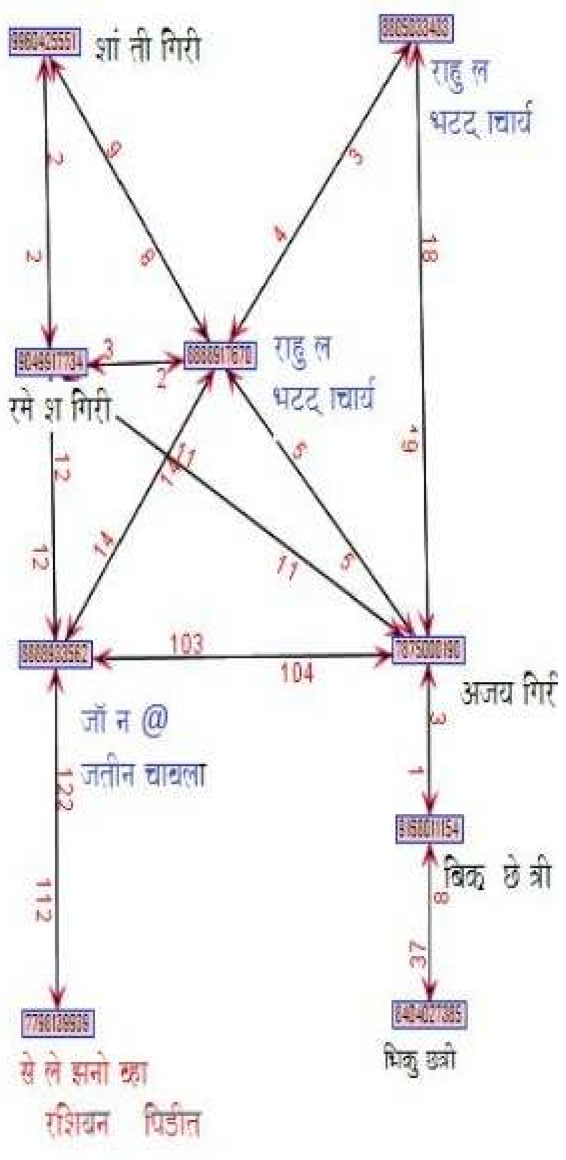
(vi) riyamalhotra.blogspot.com

14. Evidence shows that, on verification of data stored in the twelve cell phones recovered from the applicant and the co-accused in the google search panchnama, the numbers were displayed across various websites under fake names used for

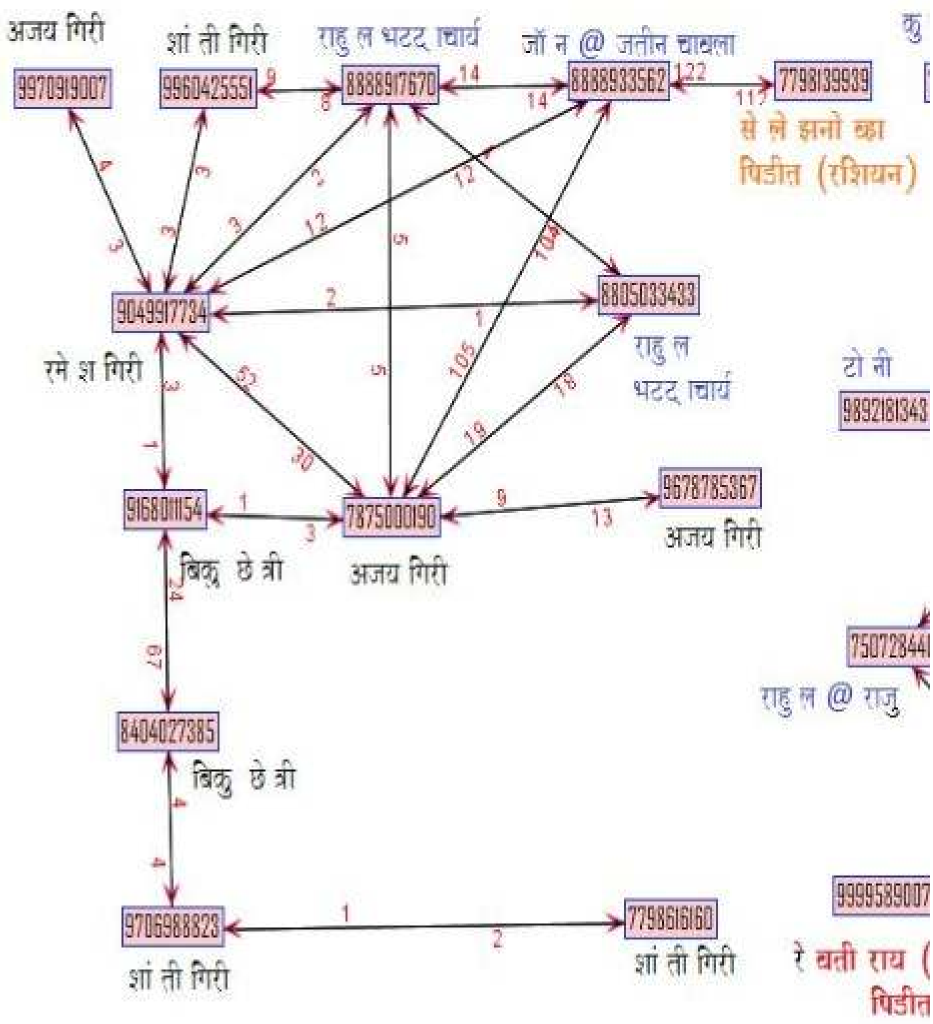
prostitution. It may be noted that the numbers of the co-accused were also displayed with the number of the applicant on the various websites. Evidence in the form of the CDR shows that the cell number of the co-accused displayed on the websites were used by the customers whose statements have been recorded. Prosecution has placed on record, a list of customers and the agents named by them who were eventually the co-accused in the case.

15. Additionally, the prosecution has also analysed the call detail records of the applicant which shows applicant was in active contact with Rahul Bhattacharya (co-accused) who was an active agent working in the syndicate headed by Krushna Singh to whom he had made 17 calls from his mobile 9960425551 on the number 8888917670 of Bhattacharya during the period 1st September, 2017 to 18th September, 2017. Similarly, applicant had called from his cell number ending with 551 to another wanted accused, Shiva ending with 339. The prosecution has also placed on record a summary of the calls made by and between the present applicant before the registration of the offence at Yerwada

Police Station in which the provisions of the MCOCA are invoked. As an illustration, let me reproduce the charts which clearly depicts that applicant was in active contact with other agents who are co-accused in the crime.



[CHART NO. 1]



[CHART NO. 2]

These charts were drawn on the basis of Call Detail Records supported by Certificate issued under Section 65-B(4) of the Evidence Act which prima-facie, indicate and suggest that, the applicant was in contact with active co-accused, Rahul Bhattacharya.

16. Furthermore, the prosecution has relied on the confessional statements of Rahul Bhattarcharya and Sagar @ Shivbahadur Sing Tankbahadur Karbir Singh. Rahul Vishvajit Bhatacharya in his statement under Section 18 of the MCOCA had stated that he himself along with Ajay Lokbahadur Giri, Shanti Laxman Giri (applicant,) Binku Tanka Bahadur Chatri, Baburam Bhimbahadur Giri, Ramesh Giri, Langada Ganesh, Pratap Sahu, John, Lipun, Rahul, Shiv Chaudhary and Sagar were working as agents for Krushna Singh, who was the Head of the syndicate. IT is also seen from the confessions of both the accused that the syndicate was mainly run for pecuniary benefits.

17. Prosecution has also relied on the statements of all four victims rescued from Hyat Hotel, Pune who had disclosed that they were in contact with agents named, Sagar, Raju, Deepak, Johnny Anna who are co-accused in the present crime. The statements of the victims are on record. The prosecution has also recorded the statements of about 10 customers who had disclosed the names and the numbers found by them on the websites to whom

they had contacted. These names and numbers are of the co-accused from whom the cell phones were recovered. It is to be noted that these co-accused who were named by the victims and the customers were also the persons who were directly linked with the active members, say for example, Rahul Bhattacharya of the syndicate with whom the present applicant was also actively in contact with, thereby establishing a nexus between the applicant and the operation of the syndicate.

18. Thus, taking into consideration, the entire evidence on record, prima-facie, it cannot be said that the applicant had no connection at all with the crime syndicate and/or with the members of the crime syndicate. The evidence, therefore, prima-facie suggests, applicant's complicity in the crime. Though, applicant's names was not disclosed at the first instance when the crime was registered at Yerwada Police Station on 19th September, 2017, however, the investigation carried out subsequently, established his link with the co-accused of which evidence is available on record either in the form of call detail records

and/or his cell number displayed on the various websites alongwith the cell numbers of the co-accused used for prostitution. Evidence suggest, these websites, were visited by the customers and they had contacted the persons whose numbers were displayed on the websites. Prosecution has primarily relied on the CDR, statements of customers in which they had disclosed the numbers on which they had contacted. Evidence shows, some of such numbers were found to be used by the co-accused which were eventually recovered from their person in the course of the investigation.

19. The evidence, therefore shows active association of the applicant with the co-accused and not just an association as contended by the applicant.

20. In the case of **Prasad Shrikant Purohit Versus. State of Maharashtra and Another, reported in (2015) 7 SCC 440** it has been held in para-85 as :

> *“. A reading of paragraph 31 in Ranjitsing Brahmajeetsing Sharma case*

shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organized crime, if a nexus either with an accused who is a member of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime' is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an 'organized crime', but when the nexus of such person with an accused who is a member of the 'organized crime syndicate' or such nexus is related to the offence in the nature of 'organized crime' is established by showing his involvement with the accused or the offence in the nature of such 'organized crime', that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person *depending upon his involvement in an organized crime in the manner set out in the said paragraph. In paragraphs 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA."*

21. In this case, the prosecution has prima-facie established applicant's nexus with the co-accused who is an active member of the organised crime syndicate and once this nexus is established, it cannot be said that the provisions of the MCOCA have been incorrectly invoked or that the applicant

has no connection with the subject crime at all. Furthermore, in the **Ranjitsing Sharma Case (supra)** the Honorable Supreme Court had also made an observation regarding bail at paragraph no. 45 of the said judgment which reads as under:

> *" It is, furthermore, trite that for the purpose of considering application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*

22. The proposal forwarded seeking approval for invoking the provisions of the MCOC Act shows, as many as fourteen crimes were registered against the head of the crime syndicate, namely, Krushna Surendra Singh @ Yadav @ Krushna Singh under Sections 3, 4, 5, 7, 8 of the PITA Act and 370A of the Indian Penal Code. In these fourteen crimes, the other members of the crime syndicate, namely Pintu Moresh @ Moresh Marshal Pintu, Pratap Antaryami

Sahu, Lipun Antaryami Sahu, Amarendra Ishwarchand Sahu, Krushna Bihari Singh were the co-accused who had also been arraigned as accused in the subject crime. In view of this factual data, prima-facie, I am satisfied that there are no reasonable grounds for believing that the applicant is not guilty of the offence or that he is not likely to commit any offence while on bail. The Bail Application is therefore rejected.

23. It is made clear that observations made hereinabove shall be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)