

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.316 OF 2019

Mandira
Salgaonkar

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Sachin Prakash Javalkar .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Ms.Sana Raees Khan i/b Subhash Hulyalkar for the Applicant.

Mrs.M.M.Deshmukh, APP for the State.

CORAM: BHARATI DANGRE, J.

RESERVED ON : 25TH NOVEMBER, 2020

PRONOUNCED ON : 15TH DECEMBER, 2020

: ORDER :

1. The applicant is charge-sheeted under the Maharashtra Control of Organised Crime Act, 1999 (for short, "MCOC Act") and came to be arrested on 29th April, 2018. His application filed before the Special Court constituted for dealing with offence under MCOC Act came to be rejected on 11th December, 2018. This has constrained him to move this Court seeking his release on bail.

2. Heard Ms.Sana Raees Khan for the applicant. She would submit that the applicant has not committed any offence as alleged and has been falsely implicated. She contend that he is not part of the organised criminal gang and in fact the role

M.M.Salgaonkar

assigned to him in the charge-sheet is very limited and it is not the case of the prosecution that he was present on the spot at the time when the alleged crime took place nor there are any allegations of conspiracy levelled against him. He can be at the most implicated by taking recourse of Section 212 of IPC i.e. harbouring the offender. He had no knowledge that the persons for whom he had arranged a stay for, are the accused persons and they have committed crime. The learned counsel would also submit that the applicant is permanent resident of the address given and there is no chance of his absconding or jumping over the bail.

The learned APP, on the other hand, strongly opposed the application and submit that the applicant is responsible for harbouring the accused persons and has financially assisted the organised crime syndicate and, therefore, offence under Section 3(3) of MCOC Act has been made out and considering the nature of his involvement and the gravity of offence, since the Act of 1999 intend to prevent or control the organised crime and to deal with the criminal activity of organised crime syndicate or gang, the prosecution has compiled reliable evidence against the present applicant, which do not deserve his release on bail.

3. With the assistance of the learned counsel for the parties, I have perused the material placed on record in the form of charge-sheet.

The prosecution case is that the informant one Sanesh Ashok Kurwat has lodged the complaint alleging that on 15th September, 2017 at about 15.30 hrs, his brother Santosh alongwith Vijay and Nadeem Maniyar were having tea in front of Sadhu Wasvani Garden, Pimpri, Pune and at that time, on account of previous enmity, Sachin Nadhe, Vicky Sutar, Vijay Nadhe, Avinash Nadhe and other unknown 4 to 5 persons arrived at the spot with deadly weapons i.e. sickles and pistols and created a reign of terror in the locality. They fired at the brother of the informant and attempted to kill him. This resulted in registration of C.R.No.531 of 2017 invoking Sections 307, 143, 147, 148, 149, 120-B, 212, 506, 201 of IPC read with Sections 3(25), 4(25), 5(1)(a)(b), 27 of the Arms Act and Section 37(1) with Section 135 of the Maharashtra Police Act alongwith Sections 3, 7 of the Criminal Law Amendment Act. During the course of investigation, police arrested co-accused- Vicky Sutar and during the interrogation, he disclosed that the said offence is committed by him alongwith other co-accused. He also disclosed the name of the applicant, who was absconding. Total ten accused persons came to be arrested in the present crime, including one juvenile accused. During the course of investigation, the fire arms, sickles and vehicles used in the crime have been seized at the instance of co-accused and statements of several witnesses came to be recorded. Charge-sheet came to be filed against accused Nos.1 to 9 and the present applicant alongwith one Chetan Walke was shown as

absconding accused.

4. The investigation lead to certain facts. It is revealed that injured Santosh was assaulted by the accused persons in the year 2010 and to revenge the said incident, Santosh Kurwat alongwith his accomplice is alleged to have committed murder of one Rakesh Ghule. Santosh was also charged with attempt to commit murder of co-accused Babloo Pal. In the year 2017, injured Santosh was contesting the election of Pimpri Chinchwad Corporation as an independent candidate and though the accused persons insisted that he should withdraw his nomination, he refused to do so. The incident of firing is an outcome of this act and there is an attempt to kill. The investigation has revealed that previous enmity and grudge in the mind of the accused persons resulted into formation of organised syndicate crime with Vicky Sutar as the gang leader and the conspiracy was hatched to kill Santosh Kurwat. The investigation reveal that co-accused Shashikant Ghule handed over two pistols and eleven rounds to co-accused Chetal Walke and Rahul Ghule. The pistols were passed to co-accused Vicky Sutar and Babloo Pal. Co-accused Babloo Pal arranged for sickles for all the accused persons and sum of Rs.30,000/- was collected from co-accused Rahul Ghule. On the date of incident, co-accused Vicky Sutar, Baburao Patil, Pratik Waghire, Hitesh Lingawat, Chetan Walke, Rahul Ghule and juvenile Shubham Yadav kept watch on the activity of Santosh. Co-

accused Vicky Sutar and Pratik Waghire fired several rounds from the pistols towards Santosh. Other co-accused, who were armed with sickles, assisted the accused persons who fired the arms. Santosh was seriously injured and co-accused Hitesh Lingawat helped the accused persons to flee away and it is at this stage, the applicant is assigned a role. Co-accused Hitesh brought the accused who had fired the arm at the injured on his Activa Scooter and on one other Scooter used in the crime. It is alleged in the charge-sheet that this applicant had full knowledge of conspiracy and the offence committed by the accused persons and in spite of this, he had given shelter to the co-accused and did not inform about the incident to the police. He is also alleged to have given cash for meeting expenses of the accused persons.

5. On compiling the material to the effect that all the accused persons were members of the organised crime syndicate and involved in the activity prohibited by law and are undertaking the said activity either singly or jointly as members of the organised crime syndicate and on behalf of such syndicate, by use of violence or threats of violence or intimidation or coercion or other unlawful means, with object of gaining pecuniary benefits or obtaining advantage for themselves, the proposal was forwarded to the Additional Commissioner of Police, North Region Division, Pune City to invoke provisions of MCOC Act. The necessary sanction under

Section 23(1)(a) of MCOC Act was accorded on 10th January, 2018 and the Assistant Commissioner of Police, Pimpri Division, Pune was directed to investigate the matter. The provisions of MCOC Act were, therefore, inserted in the said CR on 10th January, 2018.

6. In order to charge the applicant of harbouring the accused and providing the financial assistance, the material compiled in the charge-sheet is the statement of Tukaram Kadu, who is the owner of 'Samadhan Hotel' at Khanapur. He state that on 15th September, 2017, he was informed by Sachin Javalkar (applicant), resident of Khanapur that his friends will be visiting his hotel and he would arrange for their stay and would also pay their bill. He has also informed him that he has arranged for their night stay in 'Javalkar Farm House' and on 16th September, 2017, housed them in his hotel. Accordingly on 16th September, 2017, five people came to the hotel and when inquiry was made with them, they disclosed their names to be Vicky Sutar aged 23 years, Baburao @ Babya Somling Patil aged 20 years, Pratik Suresh Waghare aged 21 years, Hitesh @ Chotya Dinesh Lingawat aged 21 years and Shubham Anand Yadav aged 17 years. He arranged for their stay. The police came to his hotel and after making inquiries from the owner, took the boys into the custody. He came to know from the police that the said persons had fired at one Santosh Kurwat in Pimpri and attempted to kill him.

7. Another witness is Amol Javalkar, who runs hotel in the name of 'Javalkar Farm House'. He deposed that on 15th September, 2017, one of his relatives Sachin Javalkar had told him that stay of his friends should be arranged in his hotel and he will cater to their expenses and clear their bill. In the night, two persons came to his hotel and they were accompanied by the present applicant and five persons namely, Vicky, Baburao, Pratik, Hitesh and Shubham were the persons who visited the hotel. He arranged for their stay and food. Thereafter Vicky Sutar accompanied Sachin Javalkar (applicant) out of the hotel, however, other persons after having their dinner, stayed in the hotel. Late in the night, Vicky Sutar also came back. The next morning, at the say of the present applicant, they went to Samadhan Hotel, Khanapur. He gained knowledge from the hotel owner of Samadhan Hotel that the persons stayed in his hotel had been to the Hotel in the morning and after they attended their morning chores, police had arrived at the hotel and took the persons in the custody.

8. Statement of one Sainath Shelar came to be recorded on 26th March, 2018 where he has stated that the applicant had conspired with other accused persons to commit the offence. He narrated the incident of May 2017 when the accused persons had gathered together and he state that Chetan Walke and Vicky Sutar fired one one round from the two pistols brought by them. However, since one of the pistols was not functioning

properly, they had taken them back. After ten days, when the accused persons had called him near the railway ground, he had seen Chetan Walke, Rahul Ghule, Bunty Ghule and Vicky Sutar with a carry bag in their Aactiva and when asked, he was informed that he was carrying two pistols and seven cartridges for killing Santosh. This witness specifically taken the name of the applicant as the one who has conspired with the other accused persons to commit the offence under Section 307 of IPC.

9. Confessional statement of co-accused-Chetan Vitthal Walke came to be recorded by the Deputy Commissioner of Police after following the necessary procedure. In great details, he narrated the conspiracy hatched as well as the incident dated 15th September, 2017. He has stated that after they had injured Santosh, they had approached to the relative of the present applicant and he had arranged for their stay. He had taken an amount of Rs.30,000/- from Sachin Javalkar for arranging the stay of the accused persons.

10. Confessional statement of Rahul Vishwakarma as well as of Vicky Sutar are also on similar lines. The said statements are recorded under Section 18 of MCOC Act after complying with the requirements of the said Section, which makes the confessional statements made to the police officer and recorded by him admissible. The confessional statements compiled in

the charge-sheet clearly reveal that the applicant has played an active role by providing shelter and money to the accused persons after they committed the offence of firing at Santosh. The applicant is well acquainted with all the accused persons.

11. Pertinent to note that whoever commits an offence of organised crime and if the offence is such that it has not resulted in the death of any person, the punishment prescribed is imprisonment for a term which shall be not less than five years, but which may extend to imprisonment for life. Section 3(2) prescribes penalty for conspiracy or attempt to commit or advocating, abetting or knowingly facilitating the commission of an organised crime. Sub-section (3) prescribes the penalty for harbouring or concealing or attempting to harbour or conceal any member of an organised crime syndicate and the punishment prescribed is imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life. The involvement of the applicant can be well discerned from the material compiled in the charge-sheet. More than one charge-sheet for the offence punishable with imprisonment for ten years or more have been filed against Vicky Sutar in preceding ten years and the competent courts have taken cognizance of the said offences. The applicant is an habitual offender and offences are registered against him in Haveli Police Station as well as Nigadi Police Station. The organised crime syndicate under the leadership of Vicky Sutar is

involved in series of offences, including offence by use of violence or threat of violence or intimidation or coercion or by other unlawful means. The applicant came to be arrested on 29th April, 2018 and a supplementary charge-sheet has been filed in the said crime.

In the wake of the material contained in the charge-sheet, the applicant do not deserve his release on bail.

12. The learned counsel for the applicant has placed reliance on judgment of Division Bench of this Court in case of ***Sherbahadur Akram Khan Vs. State of Maharashtra***¹ and would submit that the facts of the case are similar to the present case and mere providing shelter to the sons, after they committed crime, has been held to be not attracting MCOC Act.

Perusal of the facts of the said case would clearly reveal that there was no material brought on record to indicate as to how the accused who may be a part of one family belong to an organised crime syndicate. It was held that mere fact that the accused are related with each other and committed offences either individually or jointly, would not lead to the inference that the accused formed an organised crime syndicate. The allegation against accused No.11 is limited to the extent that she sheltered two of her sons after they had allegedly committed certain offences. However, she was not having any link with any of the offences allegedly committed by the accused in the previous ten years.

¹ 2007(1) MhLJ (Cri) 1

This is not a case here and material in the charge-sheet reflect that the applicant is also a member of an organised crime syndicate and the ratio in the said ruling cannot be made applicable to the present applicant, who was part of the conspiracy.

13. In light of the confessional statements, it can be very well discerned that the applicant was throughout involved in the act of attack on the injured and knowing that the co-accused have committed the offence, he offered shelter to them. Since the charge-sheet contain material to the effect that he was part of the conspiracy hatched to commit the crime, the judgment in case of ***Javed Ahmed Abdul Majeed Ansari Vs. State of Maharashtra*** (Criminal Bail Application No.1147 of 2013 decided on 21st October, 2013) is also not of any assistance to the applicant.

14. As far as reliance in case of ***Ranjitsingh Brahmajeetsing Sharma Vs. State of Maharashtra and Ors.*** (Criminal Appeal No.523 of 2005 decided on 7th April, 2005) is concerned, it has been held that :

“55. The wording of [Section 21\(4\)](#), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the

intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

56. It is, furthermore, trite that for the purpose of considering an 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.

57. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of [Section 21](#) of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.”

This being the position of law, on the basis of the material contained in the charge-sheet, there are reasonable grounds for believing that the applicant is guilty of commission of offence

and since he is an habitual offender, is likely to indulge in similar offences after his release on bail. The application is, therefore, deserves a rejection and is accordingly rejected.

The observations made above are *prima facie* in nature, only limited for decision of the present bail application and shall not be construed as binding.

SMT. BHARATI DANGRE, J