

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1536 OF 2019**

Akshay Dashrath Akolkar	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Anjali Patil, Advocate for the Applicant.
Mr. H. J. Dedhia, APP for the Respondent – State.
Mr. P. U. Kapure, Samarth Police Station, Pune, Present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 12th February, 2020**

PC :

1. The Applicant is arrested on 03rd November 2017 in connection with C. R. No. 213 of 2017 registered with Samarth Police Station, Pune on 25th October 2017, for the offence punishable under Sections 384, 387, 341, 504, 506 (2) read with Section 34 of the Indian Penal Code (for short “IPC”). Section 3 (25) of Arms Act and Section 142, 37 (1) read with 135 of Maharashtra Police Act. Subsequently, provisions of Section 3 (1) (ii), 3 (4) of MCOC Act were invoked.

2 The First Information Report (for short “FIR”) was lodged by one Pratik Kirtikumar Soni. It is alleged that, on 25th October 2017 at about 06:30 pm. the complainant was proceeding on Activa vehicle along with his friend Omkar Nagarkar. When they reached near Raja Dhanrajgiri School, Kunal Raval and Akshay Akolkar

(Applicant) stopped them. Kunal Raval abused complainant and Omkar Nagarkar had threatened them of dire consequences. Kunal Raval pointed out revolver at complainant and threatened him that he would be finished. In the last month he has survived. He also stated that, they belong to Aandekar Gang. The accused also demanded Rs. 10,000/- per month as protection money and told the complainant to deposit Rs. 50,000/- within two days with him. If the amount is not deposited he would be finished. On noticing that Kunal Raval has pointed out revolver on the head of the complainant, the shopkeeper started running helter and skelter due to terror of the accused. The Applicant caught hold of complainant and threatened him that he should deposit Rs.50,000/- within two days or else he would be finished. The complainant told that he do not have money now and he would make arrangement within two days. The complainant was set free. Omkar Nagarkar was threatened by both the accused that he should not accompany complainant and he should not disclose to any one that they have demanded money or else he would be finished. The complainant approached Samarth Police Station, Pune and informed them about the aforesaid incident. The FIR was lodged on the same day.

3 During the investigation. Statement of Omkar Nagarkar was recorded on 27th October 2017. He has stated that Pratik Soni is his friend. Pratik Soni had told him that, knows Kunal Raval and Akshay Akolkar as Member of Aandekar Gang. In January 2017, the members of Aandekar Gang were externed by Police as they had created terror in Nanapeth, Somvarpeth and Rastapeth. He learnt that the aforesaid Gang has created terror in the area. Since the members of Aandekar Gang were externed, the rival gangs were trying to create supremacy in the area. Hence, the Applicant and the accused were trying to threaten businessmen and residents with weapons like pistol and sickle. On 25th October 2017 he proceeded with Pratik Soni. When they reached near Raja Dhanrajgiri School, they were stopped by Kunal Raval and Akshay Akolkar (Applicant). He got down from the Scooter. The accused picked up quarrel with Pratik Soni. He was scared and went to the school premises and watched the incident from that place. Pratik was made to get down from the vehicle. Kunal Raval pointed out pistol at Pratik Soni and threatened him. They demanded Rs. 10,000/- per month as protection money and also threatened the complainant to deposit Rs. 50,000/-. Complainant told them that he would arrange the money within two days. He was set free. The

witness was threatened by the accused that he should not accompany complainant or else he will have to face dire consequences and he would be finished. Investigation was completed and charge-sheet was filed.

4 The Applicant preferred an application for bail before the Sessions Court for MCOC Act. The said application was rejected by order dated 17th April 2019.

5 Learned counsel for the Applicant submitted that, the provisions of MCOC Act are not attracted in this case. There is no material to show that the Applicant is connected with Aandekar Gang. Kunal Raval has been granted bail. The respondent had preferred an application for cancellation of bail granted to Kunal Raval which was not pressed and the same was disposed of. Pistol was pointed out by Kunal Raval. The confessional Statement recorded under Section 18 of the MCOC Act do not refer to the present incident. In-camera statements were recorded belatedly and the version of the said witnesses is false. There are eye witnesses to the incident and it is difficult to accept that the witnesses were not coming forward to depose against the Applicant and it was necessary to record statement in-camera. The prosecution case is that

six cases were registered against the Applicant. However, in four cases the Applicant has been acquitted. The Applicant is in custody for more than two years.

6 Learned APP submitted that, the Applicant is habitual offender. Six cases were registered against him. The Applicant and the co-accused had threatened complainant and witness Omkar Nagarkar. The confessional statement of the Applicant mentioned that he belong to Aandekar Gang. The statement of witnesses recorded in-camera discloses that the accused were demanded Hafta and created terror. Statement of Raju Patidar was recorded during the course of investigation. He has stated that, on 25th October 2017 the Applicant and the co-accused had visited his Tea Shop and they were having conversation that Pratik Soni is likely to proceed towards Nanapeth and that he could be stopped there for extortion. Thereafter, the complainant and his friend came and they were threatened by accused. The witness then referred to the incident which is reflected in FIR. It is submitted that there is sufficient evidence against the Applicant to invoke the provisions of MCOC Act. Several cases are registered against the co-accused Kunal Raval and even he is habitual offender.

7 I have perused charge-sheet. The FIR refers the incident of 25th October 2017. According to prosecution the complainant and his friend Omkar Nagarkar were threatened by the accused. The co-accused Kunal Raval was armed with pistol which was pointed out on the head of the complainant. The accused demanded Rs. 10,000/- per month as protection money. The accused also demanded Rs.50,000/- within two days. The accused have also stated that they belong to Aandekar Gang. The threat dated 25th October 2017 was not followed by further Action. The complainant has not parted the amount. The prosecution has drawn inference that the Applicant belongs to Aandekar Gang on the basis of alleged statement made by the accused themselves and the confessional statement of the Applicant. The prosecution is also relying upon in-camera statement. There is nothing brought on record except the alleged statement of accused to show that the Applicant is member of crime headed by Aandekar Gang and in the committed of offences as member of that Gang. It is also not pointed out that the cases referred to in the affidavit registered against the Applicant were arising out of crime which is committed as a member of Aandekar Gang. The cases which are registered against the Applicant show that he is habitual

offender. The affidavit mentioned that the accused no. 1 Kunal Raval is the Gang leader and is habitual offender. He was granted bail by the Sessions Court by order dated 01st November 2017. The Application for bail was opposed by the prosecution and it was submitted that, the investigating agency has sent proposal for application of provisions of MCOC Act against the said Applicant. The Court granted bail to the accused Kunal Raval by observing that the bail application is pending. The proposal to apply MCOCA was not signed. The allegations against the accused are for the offences under Sections 358, 387, 504 read with 34 of the IPC. It appear that the weapon is seized and almost investigation is over. The fact that co-accused are absconding is no ground to refuse bail. The investigating agency had applied for cancellation of bail granted to co-accused Kunal Raval, however, the said application was not pressed and the same was disposed of. This fact is not disputed by the prosecution. According to prosecution the Applicant has committed offence with Kunal Raval. The prosecution has relied upon six cases registered against the Applicant, which are shown in paragraph 16 of the affidavit. In C.R. No. 150 of 2013 registered with Faraskhana Police Station, C. R. No. 147 of 2014, C.R. No. 51 of 2015, C.R. No. 03 of 2016 registered

with Samarth Police station has resulted in acquittal. The Applicant is relying upon the judgment of acquittal. This fact is not disputed by the prosecution. C.R. No. 3132 of 2014 was registered at Samarth Police Station for offence under Section 37 (1) read with 135 of Maharashtra Police Act. According to the Applicant no charge-sheet has been filed in the said case. C.R. No. 48 of 2017 registered with Samarth Police Station for the offence under Section 142, 37 (1) read with Section 135 of Bombay Police Act is pending but no charge-sheet has been filed against the Applicant. The prosecution relied upon the statement of four eye witnesses and the confession recorded under Section 18 of the MCOC Act. However, in spite of that the statement of two witnesses recorded in-camera who are referring to alleged activities of the Applicants, there is no strong material to show that the Applicant is member of Aandekar Gang. There is nothing on record to indicate that the Applicant is involved in any crime with Aandekar Gang. According to prosecution Kunal Raval is the leader of the Gang and the Applicant is involved with him in the crime. The fact remains that Kunal Raval is on bail. The Applicant is in custody for more than two years. In these circumstances the embargo under Section 21 (4) could not be precluded from granting bail to the Applicant.

ORDER

- i) Bail Application No. 1536 of 2019 is allowed;
- ii) The Applicant is directed to be released on bail in connection with C.R. No. 213 of 2017 registered with Samarth Police Station, Pune, on furnishing P.R. bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- iii) The Applicant shall report concerned police station once in a month on every first Saturday between 10.00 am. to 12.00 pm. till further order.
- iv) The Applicant shall not tamper with the evidence;
- v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)