

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2121 OF 2019

Vijay @ Chaillya Gopinath Chavan,
Age 49 years, R/o.Ashok Nagar, Shrirampur
(Presently lodged in Prison)

Applicant

versus

The State of Maharashtra

Respondent

WITH

CRIMINAL BAIL APPLICATION NO.2537 OF 2019

Sachin Asaram Shahane, Age 28 years,
R/o.Ashoknagar, Tal.Shrirampur
(Presently lodged in prison)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Priyal G. Sarda for applicant in BA No.2121/2019.
Mr.Vaibhav V. Ugle for applicant in BA No.2537/2019.
Mr.S.H.Yadav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2020

PC :

1. The applicants in both these applications are seeking bail in CR No.17 of 2018 registered with Talegaon Dabhade Police Station for offences under Sections 392, 411, 414, 120B, 109 of Indian Penal Code. Subsequently provisions of Sections 3(1)(i), 3(2), 3(4) and 3(5) of MCOA Act were invoked.

2. The prosecution case is that on 14th January 2017 on the occasion of Makar Sankranti, the first informant Smt.Sarika Chorge was at Tulza Bhavani Mandir. Two unknown persons came on

motorcycle and the pillion rider snatched her gold ornament and ran away towards Jijamata chock. The complainant also learnt that three other ladies were also victims with similar acts. During the course of investigation statements of other victims were recorded. The applicants were arrested and on completing investigation charge sheet was filed.

3. Learned advocate for applicant submitted that there is no evidence to invoke provisions of MCOC Act. There is no authentic evidence to show involvement of applicants in the crime. Learned counsel for applicant in BA No.2121/2019 submitted that the applicant has been falsely implicated in this case. There is no identification of the said applicant. He has been implicated since his son is gang leader. The applicant has not played any role in the offence of robbery. The witnesses have not stated that the applicant was one of the participant in the crime. The confession of co-accused Sachin Shahane was retracted by him. The vehicle allegedly recovered during the course of investigation is not owned by the applicant. There is no material to apply the provisions of MCOC Act against applicant.

4. Learned counsel for applicant in BA No.2537/2019 made similar submissions. It is submitted that entire charge sheet is silent about his role. The applicant is not member of crime syndicate. He was not present at the scene of offence. He is not instrumental in snatching the ornaments of victims. The confessional statement was recorded and the same was retracted by him. Merely on the basis of such statement, the applicant cannot be kept in custody.

5. Learned APP submitted that both the applicants are members of crime syndicate. They are indulging in offence of robbery. There is strong evidence against them to show their involvement in crime. Prior approval was sought for applying provisions of MCOC Act which was granted. The applicants are habitual offenders. The vehicle was seized from applicant. Gold Mangalsutra weighing two tolas was recovered at the instance of applicant Vijay Chavan. Memorandum panchanama was conducted u /s 27 of Evidence Act in that regard. Maruti Swift car seized, which is in name of Shivani Raut but purchased by Vijay Chavan. During investigation of Cr No.35 of 2018 with Dehu Road Police Station, stolen ornaments of Ratnabai were recovered from co-accused Somnath. The accused Vinod Chavan is the gang leader. He is absconding. He is the son of applicant Vijay Chavan. The applicant is involved in seven cases which were registered at different police stations. The confessional statement of Sachin Shahane has attributed role to the accused which indicate that they were repeatedly indulging in similar activities of robbery. From confession of applicant Sachin Shahane it is clear that accused hatched conspiracy and committed offence. They adopted common modus operandi. The confession shows that accused are members of crime syndicate. He, therefore, submitted that the applications be rejected.

6. The FIR was lodged by the victim who was robbed of gold ornament. The statement of other victims who were also subjected to similar acts, were recorded during the investigation. On perusal of the confessional statement of the accused Sachin Shahane, it is apparent that both the applicants and the co-accused were involved

in acts of robbery. The co-accused Sachin Shahane has stated that robbed ornaments have been handed over to him for disposal and the amount received after its sale were distributed amongst accused. He has given details and the manner in which all the accused were involved in crime. He has also established the link of the applicants with co-accused. The applicant Vijay Chavan was involved in about 7 cases out of which some cases were considered for applying provisions of MCOC Act. The cases were registered with Tophkhana Police Station vide CR No.286/2017, 291/2017 and 301/2017 u/s 395 of IPC, Wakad Police Station vide CR No.412/2018 u/s 392, 34 IPC, Nahar Darwaja Police Station, Madhya Pradesh vide CR No.369/2017 u/s 380 of IPC, Old Goa Police Station, Goa vide CR No.80 of 2016 u/s 395 of IPC and Triwallur Police Station, Tamil Nadu vide CR No.309/2018 u/s 395 of IPC. The affidavit filed by the prosecution also indicates that the gang leader was also involved in five cases. It is also pertinent to note that Sachin Shahane has allegedly played vital role in disposal of stolen property. He is involved in four cases registered at Shrirampur Police Station and Rahuri Police Station. The offences were registered u/s 392, 411 r/w 34 of IPC and u/s 371 r/w 34 of IPC respectively. The modus operandi adopted by the accused is reflected in confessional statement. The effect of retraction will be considered at appropriate stage.

7. In the light of nature of evidence and on account of embargo u/s 21(4) of MCOC Act, no case for bail is made out. Both the bail applications are rejected.

(PRAKASH D. NAIK, J.)