

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3391 OF 2019

Shubham Anil Saswade @ Jagtap,
Age 21 years, Occ.Education, R/o.Bagrangwadi,
Shikrapur, Tal.Shikrapur, Dist.Pune
(Presently lodged in Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aniket Nikam i/by Vivek N. Arote for applicant.

Mr.S.H.Yadav, APP, for State.

Mr.J.V.Chauhan, API, Shikrapur Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 27th February 2020

PC :

1. The applicant is seeking bail in connection with CR No.I-595 of 2017 registered with Shikrapur Police Station, District Pune.

2. The offence was registered under Sections 394 and 120-B r/w 34 of Indian Penal Code. Subsequently Sections 3(1)(ii), 3(4) of Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act') were added.

3. The investigation is already over and charge sheet is filed. The applicant was arrested on 29th November 2017. The FIR in this case is lodged by one Mohsin Tamboli. According to him, he was working as Cash Executive with Redient Cash Management. His job was to collect the cash from different outlets and to deposit it with different banks. On 20th November 2017, in the morning at about 9 am, he

had collected Rs.15 lakh from different outlets. He was going towards Shirur side. Near Shikrapur Maldag cross road, two unknown persons intercepted him. They took away the bag containing cash by showing knife. One of them inflicted blow with knife on his chest. The first informant had seen those culprits. He lodged the FIR at the police station. The investigation was conducted. During the course of investigation nine accused were arrested. The identification parade was held on 30th December 2017 at Yeravada Jail, Pune. The first informant identified accused Sachin Rakshe and Nandlal Hole as persons who had committed robbery. The applicant was arrested on 29th November 2017. On that day the police had received a secret information, on the basis of which Scorpio jeep was intercepted. The present applicant along with three other accused were travelling in the said vehicle. He was found in possession of Rs.40,000/-. The applicant and others were arrested and cash amount found with them was seized. On 23rd December 2017, prior approval u/s 23(1)(a) of MCOCA Act was granted to apply the provisions of that Act. In the proposal the antecedents of the accused are mentioned. Except present FIR, there is no reference of any antecedent.

4. The prosecution case is that crime syndicate was headed by accused no.1 Shubham @ Chiknya Vishnu Jadhav. Against him five other offences are registered, cognizance of which was taken by competent Courts. Apart from him, accused no.8 is involved in one offence besides the present offence. The prosecution case is that in furtherance of the object of crime syndicate headed by Shubham Jadhav this offence was committed.

5. After application of MCOC Act the confession of two accused were recorded u/s 18 of MCOC Act. One of them is Abhijit Kisan Shinde and other is Balvir @ Balu @ Maharaj Savleram Shinde. Both statements are identical. Both the statements mention that on 20th November 2017 these two accused met gang leader and they went to Chakan Chowk, Shikrapur. They went to a ground where six boys had already reached in a scorpio jeep. One of them allegedly was the present applicant and those statements mention that he himself gave his introduction to the other accused. Similarly, other accused also introduced themselves to the applicant. After that, accused Abhijit gave his motorcycle to Sachin Rakshe and Nandlal Hole, who left the place at 10.30 am. Till 2 pm, they did not return. Therefore, accused no.1 gang leader took all of them to Ranjangaon. One of the accused contacted Rakshe and Hole inquired about their whereabouts. Those two called others to a particular place. When the other accused met them i.e. Rakshe and Hole were carrying a bag.

6. Learned counsel for applicant submitted that there are no criminal antecedents against applicant. The confessional statement of the accused recorded u/s 18 of MCOC Act do not refer to involvement of applicant. Learned counsel pointed out the statement of witness Sharad Sonawane recorded on 21st November 2017. The applicant is referred to as the person sitting in car. However, he did not participate in conversation with regards to conspiracy hatched by accused. His further statement was recorded on 6th December 2017 which is silent about alleged conspiracy. In the third statement dated 26th March 2018 it is stated that he has over heard the conversation of inmates of vehicle with regard to alleged conspiracy. This

statement is made after four months from date of arrest. The statement of applicant's father was recorded on 9th April 2018. He stated that on 20th November 2017 the applicant was at home. His friend Gotya @ Mahesh Butle came home and told him that his grand mother is ill and she has to be taken to hospital and requested for scorpio vehicle. It was given to him. On next day he returned it.

7. The case of co-accused Shubham @ Vicky Jadhav is similar except few distinctions. He has been granted bail by order dated 12th June 2019. As stated above, the applicant's name has been referred to by Sharad Sonawane as the person sitting in car. There is recovery of Rs.70,000/- from the possession of applicant. There was recovery of Rs.40,000/- from Shubham @ Vicky Jadhav. The statement of father of applicant was recorded. He has stated that the car was owned by him and it was handed over to Mahesh Butte as he had represented that the car is required for taking his grand mother for treatment. The applicant is in custody from 29th November 2017. Confessions of two accused were recorded under Section 18. Both statements are identical. While granting bail to accused Shubham @ Vicky Jadhav, this Court has analyzed the confessional statements. The statements indicate that offence was committed by accused Rakshe and Hole of which others were not aware. The cash cannot be directly connected with amount in robbery. There is nothing to suggest that applicant has committed offence under MCOC Act.

8. Considering the aforesaid factual aspects, in spite of rigors u/s 21(4) of MCOC Act, there is no impediment in granting bail to the applicant. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3391 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-595 of 2017 registered with Shikrapur Police Station, District Pune, on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall attend Trial Court proceedings regularly, unless exempted by Trial Court for some reason;
- (iv) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

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