

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.87 OF 2020

Ghulam Ali Sayyed

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Deepak Gautam, Advocate for Applicant.
- Mr.S.S. Pednekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.156/2019 registered with Bhoiwada Police Station, on 08/05/2019, under sections 392 r/w 34 of the Indian Penal Code. Subsequently, offence u/s 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act') are applied.

2. The Applicant was arrested on 09/06/2019 and since then he is in custody.

3. Learned counsel for the Applicant did not argue the matter. First he said his client has taken NOC from him. Then he stated that he does not have brief. Therefore without his assistance, I am proceeding to decide this matter as it is pending since long and involves question of grant of refusal of bail.
4. Heard Mr.S.S. Pednekar, learned APP for the State. I have perused this application and the charge-sheet annexed to this application.
5. The matter pertains to incident dated 08/05/2019. To protect identity of witness, their names are hidden in the charge-sheet. Therefore even in this order, no names are mentioned. The informant was going to attend a marriage ceremony on 08/05/2019 with her family. At about 04.00 p.m. she was proceeding towards a temple at Nayagaon along with her son's sister and sister's husband. Suddenly two unknown persons came on motorcycle. One of them had covered his face with

handkerchief and the rider was wearing helmet, the pillion rider snatched her Mangalsutra. Both of them went away. The informant had held her Mangalsutra. Therefore half of Mangalsutra remained with her and half of Mangalsutra was taken away by them. In the process, the informant had suffered some minor injury to her neck. The informant had given some description of these offenders. But the description was very basic as one of them was wearing helmet and the other had covered his face.

6. The supplementary statement shows that she could see forehead and eyes of the pillion rider. She was shown CCTV footage. That only showed the incident. The identity still remained vague. On 20/07/2019 the police showed one of the accused to the informant in the police station and the informant identified him in the police station. On 10/06/2019, the Applicant gave memorandum statement that he was willing to show the jeweller to whom, he had sold the Mangalsutra in this connection. Apart from that there are statements of family

members accompanying the informant. Their statements did not take the prosecution case any further than what is mentioned in the FIR.

7. There is statement of the jeweller, which is recorded on 10/06/2019. He had stated that two unknown persons had come to his shop for selling the Mangalsutra. According to him on 09/05/2019 those two persons had sold part of the Mangalsutra to him. The injury certificate of the informant shows that she had suffered one abrasion on her neck and on back. Those injuries were simple.

8. The competent authority granted prior approval under section 23(1) of the MCOC Act to apply provisions of MCOC Act and to carry out investigation. After completing the investigation, sanction u/s 23(2) of MCOC Act was granted on 30/08/2019. In this sanction order, two offences are mentioned against the present Applicant. They were registered at Dadar Police station vide C.R.No.65/13 and C.R.No.137/13 u/s 392 r/

w 34 of the IPC. It is mentioned in the sanction order that the Applicant was the gang leader and therefore the provisions of MCOC were invoked.

9. Learned APP opposed this application. He submitted that recovery at the instance of present Applicant was sufficiently strong circumstance. He submitted that the Applicant has 16 similar antecedents at Worli, Dadar, Mahim and Shivaji Park police station in the year 2013.

10. I have considered these submission. As far as the Applicant's antecedents are concerned, they were not reflected at all in the sanction order. All these offences are from the year 2013. The present offence is of the year 2019. The sanctioning authority and the authority granting approval for applying provisions of MCOC Act, have taken into consideration only two offences as mentioned earlier. It appears that in both these offences the Applicant's co-accused were different. Even the co-accused in this case is different and has no connection with the

C.R.Nos.137/2013 and C.R.No.65/2013 of Dadar police station. Therefore on this basis, from these two offences, it is difficult to observe that the Applicant had formed any gang or that the offence, in particular, which is subject matter of this investigation, was committed as a part of any organized crime syndicate. At the highest, it remains an individual offence committed on that particular date by both the accused in this case. Since the authority granting approval to apply MCOC to this case and the sanctioning authority have considered only two aforementioned previous offences, the other antecedents cannot be considered to decide applicability of MCOC provisions. Therefore I am satisfied that this is not a case where the Applicant can be said to have committed offence under MCOC Act.

11. In this background I have considered the material against him. The Applicant was one of the accused who was shown in the police station. That is hardly a proper identification. The charge-sheet does not contain any

identification parade. There is recovery from a jeweller's shop, who was shown by the Applicant. Therefore, the only circumstance which remains against the present Applicant is about that recovery. Undoubtedly this is a relevant circumstance. But once I have reached the satisfaction that offence under MCOC Act is not made out against the Applicant; at this stage, this solitary piece of evidence should not come in the way of the Applicant in getting released on bail particularly, because the Applicant is in custody since 09/10/2019. Though the Applicant has antecedents, at this stage, there is nothing to show that two offences mentioned in the sanction order and the present offence can attract the provisions of MCOC. Therefore satisfaction u/s 21(4) of MCOC Act can safely be recorded that the Applicant has not committed any offence under MCOC Act and that he is not likely to commit offence under the MCOC Act. It is clarified that this satisfaction is recorded for the purpose of decision of this bail application only. The trial Court should independently decide this question during the trial.

12. Considering the antecedents which are pointed out by learned APP against the present Applicant, it is necessary to keep check on his activities. He can be directed to attend the concerned police station regularly, so that there is check on his activities. A single default without reasonable excuse, shall enable the Respondent to make an application for cancellation of this order.

13. Hence, the following order :

ORDER

- (i) In connection with C.R.No.156/2019 registered with Bhoiwada Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station on every Friday between

10.00 a.m. to 11.00 a.m. to mark his presence, for the period of two years from today. If he does not attend as directed, the State of Maharashtra can move for cancellation of this order.

- (iii) Since learned advocate for the Applicant is shying away from his responsibilities, the registry is directed to intimate this order to the Applicant through the Jail Superintendent.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)