

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.445 OF 2020

Suraj Laxman Gade .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Satyavrat Joshi for the Applicant.

Mr. Ajay Patil, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 13TH JULY, 2021.

P.C:-

1. The Applicant being arrested on 01/04/2019 in connection with C.R. No.296 of 2019 registered with Yavat Police Station, Pune, seeks his release on bail. He is charged with offences punishable under Sections 395, 347 read with Section 34 of the IPC and, in the same C.R., the provisions of the MCOCA, 1999 were added after obtaining the necessary prior approval.

2. The FIR in question was registered on 28/03/2019 on a complaint lodged by Ramprasad Rathod, a driver working with Sridevi Transport Comapny, Jalra Patan, Rajasthan. He alleges

that by loading wheat in his truck from Rajasthan to be delivered to Goa, he was en-route via Kedgaon, Chauffulla, Morgaon, Lonan on 26/03/2019, at about 9.30 p.m. The Complainant alleges that his truck was intercepted by a WagonR car and three persons alighted from the said car, took control of the truck and while proceedings towards Supa on Pune Solapur Highway, the truck was brought to a grinding halt. The incident narrates that the truck was driven by the accused persons and the Complainant is unaware, where the truck was taken. The Complainant was made to sit in the Wagon R car, which was driven for the whole night and they were dropped at a dissolute place. The complaint is against unknown persons and the accused were subjected to a Test Identification Parade. Admittedly, the Applicant is not identified in the Test Identification Parade.

The material relied upon to connect the Applicant to the said crime including the serious offences under MCOCA is the confessional statement of one co-accused, Sagar, recorded after complying with the procedures and formalities under Section 18 of the MCOCA and another circumstances is the recovery of an empty gunny bag from the Applicant.

When the statement of co-accused is perused, he makes a reference to the Wagon R car which was handed over to him by its owner one Mr. Kulkarni, as a substitute driver, for the purpose of plying one Sachin Gajge. The co-accused attributed a specific role to the Applicant as the person, who drove the truck in which

Sagar also sat and the Wagon R car followed the truck. If this statement is pitched against the statement of Mr. Kulkarni recorded under Section 164 of the Cr.P.C., it is apparently at variance since the owner of the car has stated that Sagar had borrowed the car for a visit to the hospital and, after returning, he had parked the car in his house. On 31/03/2019, he became aware that the car came to be seized in Pune. His version is that Sagar took the car and brought it back and made over the keys to his wife and also assured him to pay the rental for the said car being Rs.5,000/-. Mr. Kulkarni has stated that the Applicant was working as a driver, on transfer, with him. It is this material, which is relied upon to implicate the present Applicant in the present C.R.

3. The Application is opposed by filing an affidavit by the Dy. Superintendent of Police, Daund Division, Pune. Along with the said affidavit, a chart has been annexed, which would reflect the activities of the alleged gang headed by one Umesh Kale, the gang leader and the Applicant is charged as a member of the gang. Perusal of the chart would reveal that against the gang leader, there are three offences registered under Section 392 and 395 during the years 2017, 2018 and 2019 respectively. As far as the present Applicant is concerned, he is not involved in any of the offences along with the gang leader. The chart would reveal that none of the accused person is privy to any of the crime committed by the gang leader. Pertinent to note that there

may be individual offences registered against the accused persons, but for invocation of the provisions of the MCOCA what is contemplated is a continuing unlawful activity, which is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of 10 years. The term 'Organized crime' has also assigned a definite connotation under the MCOCA to mean that any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person. 'Organised crime syndicate' means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

4. Prima facie, the necessary ingredients of being operative as an organized crime syndicate is conspicuously absent, in the present case. As far as the present Applicant is concerned, he is implicated only in the present crime being C.R. No.296 of 2019, wherein the provisions of MCOCA have been invoked with no commonality with either the gang leader or any member of the gang. In the light of the scanty material compiled against the

Applicant in the charge-sheet and the effect of the confessional statement of co-accused recorded under Section 18 of the MCOCA, being the subject matter to be determined at the time of trial, the Applicant is entitled to be released on bail subject to the following condition.

ORDER

- (a) The Applicant – **Suraj Laxman Gade**, shall be released on bail in C.R. No.296 of 2019 registered with Yavat Police Station, Pune Rural, Dist. Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall mark his attendance in the Special Court once in every two months.

5. The Application is allowed in the aforestated terms.

6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]