

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

CRIMINAL BAIL APPLICATION NO. 457 OF 2020

Niyamtulla @ Munna Mohd. Shirgaonkar ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Vinod Kashid, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent – State.

Mr. Bhat, (P.I.) Antop Hill Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 31st MARCH, 2021

PER COURT:

1. The applicant has preferred this application for bail in C.R. No. 229 of 2012 registered with Antop Hill Police Station, Mumbai. The offences were registered under Sections 307, 387, 120(B), 506(2) r/w Section 34 of Indian Penal Code (for short "IPC). Subsequently, Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") were applied. The applicant was arrested on 7th June, 2019.

2. The First Information Report (for short "FIR") was registered on 4th October, 2012. The case of the prosecution is that on 4th October, 2012 at about 5.15 p.m. Mangesh Vichare was

standing in front of Baudhik Sampada Bhavan. Rohit @ Pappu Chavan, Prakash @ Vicky Krishna Bhatkal and Anil More rushed towards him with sharp edged weapon and assaulted him. Rajesh Vichare intervened to rescue Mangesh. He was also assaulted by the accused. Incident was reported to Antop Hill Police Station. Accused were arrested. Vijay Kedare is the leader of crime syndicate. He is involved in several cases. Proposal was forwarded for applying provisions of MCOC Act. Supplementary statement of Rajesh Vichare was recorded on 7th October, 2012. He stated that Vijay Kedare was in jail in another offence. In June, 2008 two unknown persons had visited office of complainant. They took Yogesh and Mangesh to Thane Court. Vijay Kedare was brought to the Court. When the complainant and his brother met Vijay Kedare, they were threatened. Yogesh was told to resign from the post of Chief Promoter of Sainagar Sahakari Grihnirman Sanstha and he gave all the documents to Chandu Dhage and that he would be made Chief Promoter of the scheme and Vijay Kedare would decide as to who would be appointed as the builder. Accused Chandrakant Dhage and others went to the office of complainant. They threatened the complainant in the name of Vijay Kedare and demanded the documents. In 2009 he was enlarged on Parole. He had demanded documents from the complainant and threatened him of dire

consequences. Charge-sheet was filed against arrested accused.

3. The applicant had preferred Criminal Writ Petition No. 4350 of 2013 for quashing the proceedings under the MCOC Act initiated against him. The petition was heard on 8th March, 2014. It was directed to be listed on 19th March, 2014. The investigating agency had directed that not to take any coercive action against the applicant till the next date i.e. on 19th March, 2014. The petition was finally heard and vide order dated 22nd March, 2018, the petition was dismissed.

4. Supplementary charge-sheet was filed against the applicant. He preferred an application for bail before the Special Judge under MCOC Act. The said application was rejected by order dated 3rd December, 2019. While rejecting the said application, it was observed that the participation of the applicant in the crime is alleged by the prosecution as member of organized crime syndicate. Serious offences are committed by organized crime syndicate. C.R. No. 229 of 2012 was registered against 8 persons. Trial was conducted against other accused. The applicant was absconding. The co-accused were convicted vide Judgment dated 18th January, 2019. The prosecution had preferred application for issuing proclamation. Subsequently, the applicant was arrested. He was absconding for

more than 4 years. Writ Petition preferred by the applicant was rejected by the High Court. High Court had scrutinized the proceedings and come to the conclusion that sufficient material was found to proceed against applicant. The High Court had observed that the applicant had not cooperated with investigation and approached the High Court after more than 4 years. The learned Special Judge perused the material on record and rejected the application for bail on merits.

5. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The residence of the applicant is situated at C.T.S. No. 415 at Wadala Road (East), Mumbai. The tenants from Sai Nagar Co-operative Housing Society Ltd. to avail benefits from S.R.A. scheme. Yogesh Vichare has appointed as Chief Promoter. He had two brothers, namely Mangesh and Rajesh. They were having criminal background. Some of the tenants were not satisfied with the conduct of the Chief Promoter. They formed another society and appointed committee. The applicant was elected as president. Documents were submitted to the builder for re-development. Some of the tenants including Chandrakant Dhage form Co-operative Housing Society. Baliram Dhage was appointed as president. They submitted their consent to the developer. Thus, there was dispute between two groups. The

applicant has no connection with the crime syndicate. He has no criminal background. He had sought information about criminal cases against Yogesh Vichare. The applicant was pursuing his remedy under the Law. He was not absconding. Co-accused Arogya Swami Paul, Krishna Mubarak Shikhandor @ Kari and Chandrakant Dattaram Dhage were granted bail. Learned advocate for the applicant has relied upon orders granting bail to the said accused. Chandrakant Dhage was granted bail by this Court vide order dated 30th July, 2015. Provisions of MCOC Act are not applicable to the applicant. The order passed by this Court dismissing the Criminal Writ Petition cannot be considered for rejection of the application for bail. The scope of both the proceedings are different. The co-accused who has been convicted by the trial Court vide Judgment dated 18th January, 2019 were awarded sentence of 5 years. The leader of the gang Vijay Kedare has been sentenced to suffer imprisonment for 7 years. The applicant is in custody for substantial period. The convicted accused Arogya Swami Paul and another accused had preferred appeal challenging the conviction before this Court. The sentence imposed against them has been suspended pending appeal and they are directed to be released on bail by order dated 18th July, 2010 in Criminal Application No. 114 of 2019 in Criminal Appeal No. 110 of 2019.

6. Learned APP submitted that the applicant has participated in the crime. Specific role has been attributed to him. There is strong evidence against the applicant. He was absconding for more than 4 years. In the event, bail is granted to him there is every likelihood that he would abscond. While dismissing the Criminal Writ Petition preferred by the applicant, this Court has observed that there is material showing involvement of the applicant. The offence is of serious nature. The applicant has acted in connivance with the crime syndicate. Hence, application for bail may be rejected.

7. The FIR was registered on 4th October, 2012. The applicant could not be arrested. He preferred Criminal Writ Petition No. 4350 of 2013. The order annexed to this application indicate that the interim protection was granted to the applicant for one day by order dated 18th March, 2014. It was extended till 21st March, 2014. There is nothing on record to show that the interim protection was thereafter extended. Writ Petition was dismissed by order dated 22nd March, 2018. The applicant had not surrendered before the Police Station and was not available for investigation. He was absconding. The trial against the co-accused had proceeded. When the petition came up for hearing before this Court, about 20 witnesses were examined. The FIR is lodged by Rajesh Vichare. The

incident is dated 4th October, 2012. Brother of first informant was assaulted by the accused. The case of the prosecution is that the incident had occurred at the instance of the Vijay Kedare, who wanted to have control of development project of a slum in the area. Mangesh, Rajesh and Yogesh were part of one group of slum dwellers. Whereas Vijay Kedare wanted to have control and handover the project to another builder. Yogesh was Chief Promoter of the Sainath Co-operative Housing Society. Vijay Kedare wanted to establish his supremacy. It is alleged that, applicant was one of the associates of the Vijay Kedare. He was in touch with him. He was instrumental in giving threats and had facilitated commission of offence. Approval was granted under Section 23(1)(a) of MCOC Act to apply provisions of Section 3(1)(ii), 3(2), and 3(4) of MCOC Act. First charge-sheet was filed on 24th March, 2013. Sanction was obtained under Section 23(2) of MCOC Act. On 24th September, 2013 sanction was granted under Section 23(2) of MCOC Act against the other accused.

8. Statements of witnesses were recorded under Section 164 of Cr.P.C. The accused tried to extort money from Yogesh Vichare. The material on record discloses that the applicant and others met Mangesh Vichare and told him to pay Rs. 5 Lakhs and meet Vijay Kedare. The applicant and others had planned to assault

Mangesh. The prosecution alleges direct connection of the applicant with the assault at the behest of Vijay Kedare. The division bench of this Court while dismissed Criminal Writ Petition No. 4350 of 2013 vide order dated 22nd March, 2018 has observed that taking into account the statements which forms part of charge-sheet, it cannot be said that there is no material to proceed against applicant. Prosecution is rightly launched against him. The material shows that the crime syndicate was led by Vijay Kedare. The accused including the applicant were his associates and members of crime syndicate. It was further observed that the trial against co-accused had proceeded. It is disturbing that the applicant had not cooperated with the investigation and did not surrender before the Police. For more than 4 years he was absconding. The record shows that the applicant was granted protection by this Court on 18th March, 2014 till 19th March, 2014. It was extended till 21st March, 2014. The record does not show that the protection was extended. Thus, after March, 2014 also more than 4 years have passed, he was not available for investigation. It is pertinent to note that the charge-sheet contains material against the applicant. The case of the co-accused who were granted bail can be distinguished. The applicant was absconding for more than 4 years. Hence, no case for grant of bail is made out.

ORDER

Criminal Bail Application No. 457 of 2020 is rejected and stands disposed off accordingly.

(PRAKASH D. NAIK, J.)