IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2089 OF 2021

Aakash @ Balu Tanaji Khude … Applicant

Versus

The State of Maharashtra … Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 2520 OF 2021

Samadhan Vinayak Ovhal … Applicant

Versus

The State of Maharashtra … Respondent

Mr. Shailesh D. Chavan with Shrikant Panhale, for the Applicant in BA No. 2089 of 2021.

Mr. Shailesh Chavan with Shrikant Panhale and Aasavari Khandkar, for the Applicant in BA No. 2520 of 2021.

Mr. H. J. Dedhia, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 18th November, 2021.
PRONOUNCED ON : 29th November, 2021.

PC:-

. Both the applicants seeking bail under Section 439 of the Code of Criminal Procedure in connection with C.R.No.779 of 2017 registered with Satara City Police Station, District-Satara for the offences punishable under Sections 395, 341, 364, 504 and 506 of the Indian Penal Code along with Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act").

2 The prosecution case in nutshell is that, the informant is in construction business and had taken loan of Rs.3,50,000/- on interest at the rate of 15% from accused Pradeep Jadhav on 3rd March, 2016. The entire amount along with interest was duly repaid by him. Still accused Pradeep Jadhav used to demand more amount. Therefore, a complaint with Satara City Police Station was lodged vide C.R. No. 572 of 2016 by the present informant.

3 On 26/11/2016 while informant was at his native village, the accused Pradeep Jadhav and three associates visited his house, abused his wife and threatened her of dire consequences. The informant again lodged report to that effect. When the accused Pradeep Jadhav came to know about complaint, he called informant and returned his Honda Amaze Car but not before intimidating him.

4 On 27/11/2016 when the informant visited the Court for work, the accused Sandip Jadhav, who is on bail, told him that he is associated with accused Pradeep Jadhav and he should resolve the issue otherwise he will face consequences.

5 In December 2016 at about 5-30 p.m. when the informant and his friend were proceeding by his car they were chased by accused in car. The accused was along with Bala Khude (applicant), Mayur Gawali (on bail) and two other unknown persons. They demanded Rs.1 lakh and threatened the informant. The informant then paid amount of Rs.50,000/- which he was carrying with him. However, the accused further demanded the balance amount of Rs.50,000/-. On 28/12/2016 the informant again paid an amount of Rs.39,000/-. Inspite of that the accused Pradeep Jadhav was repeatedly threatening the informant and demanding more moneys.

6 In the month of April, 2017 the informant was stopped by accused Pradeep Jadhav and his associates. They pulled him out of his car and abused him. They demanded moneys and threatened him of dire consequences. Even they assaulted the informant by fist and kick blows and removed cash of Rs.14,000/- from him and forced him to sign a cheque of Rs.5 lakhs. On account of fear the informant did not lodge

the complaint with the police. Since the accused were repeatedly threatening, the informant lodged FIR on 24/09/2017. Period of offence as stated in the FIR is from 26/11/2016 to April, 2017.

7 Mr. Chavan, learned Counsel for the applicants, at the very outset, submits that the dispute between the informant and the accused Pradeep Jadhav relates to money landing transaction which is apparent from the contents of FIR itself inasmuch as the informant had taken loan with interest from the accused Pradeep Jadhav. In such circumstances, the accused can not be charged with the provisions of MCOC Act. Even otherwise the role of the present applicant is only in respect of alleged threats given by him along with the other accused. The complaint would reveal that the main role is attributed to accused Pradeep Jadhav and not the applicants. According to learned Counsel, accused Mayur Gawali and Sandip Jadhav whose role is more or less same *qua* the applicants have been enlarged on bail by this Court on 4th February, 2020 and, therefore, the ground of parity is very much available to applicant. For all these reasons, the applicants deserve to be enlarged on bail, argued learned Counsel.

8 Mr. Dedhia, learned APP, vehemently opposed the submissions by

contending that the applicant, namely, Aakash is gang leader of the crime syndicate. The role attributed to the applicants are quite different than others who have been enlarged on bail by this Court. The ground of parity is not applicable to the applicants. Having regard to the seriousness of offence, there is no merit in the applications and the same are liable to be rejected, argued learned APP.

9 Perused investigation papers including the FIR. I have also gone through the reply of Sub Divisional Police Officer. I have also gone through the order dated 4th February, 2020 passed by this Court (Coram: P. D. Naik, J.) in Criminal Bail Application Nos. 702 of 2019 and 1388 of 2019 whereby accused Mayur Arun Gavali and Sandip Dattatray Jadhav came to be released on bail.

10 Perusal of FIR would show that the informant had taken hand loan of Rs.3,50,000/- from accused Pradeep Jadhav and in his words the whole loan was repaid along with interest. Despite this, the accused Pradeep Jadhav was harassing him and extracted various amounts from time to time under the garb of hand loan transaction. This definitely given semblance of money landing transaction inasmuch as the FIR would also further reveal that every time the accused Pradeep Jadhav allegedly used to ask the informant that the latter had not cleared the transaction of hand loan to the extent of rate of interest. Although the prosecution claims that the applicant Aakash is a gang leader but the whole complaint does not suggest so and it is quite visible and perceptible that it is the accused Pradeep Jadhav, who had all along been alleged to have threatened and extracted moneys from the informant. In short, the lead role is clearly played by accused Pradeep Jadhav.

11 As against above, if the chronology of events is seen carefully from the contents of FIR, then it would be seen that the first incident started on 08/09/2016 when the informant allegedly lodged the FIR vide C.R. No. 572 of 2016 on the ground of accused Pradeep Jadhav demanding moneys despite clearing the hand loan transaction by the informant. Then on 26/11/2016 the accused Pradeep Jadhav allegedly along with his associates entered into his house and threatened his wife. Again on 27/11/2016 when the informant had been to the Court he was stopped by accused Sandip Jadhav and threatened him to settle the money transaction otherwise he would be killed. Pertinently enough Sandip Jadhav has been released on bail by this Court on 4th February, 2020.

12 Next incident took place in the month of December, 2016 wherein his car was intercepted by accused Pradeep Jadhav and four associates. This time applicant-Aakash was one of them. All of them again demanded interest along with Rs. 1 lakh and started threatening. The informant then paid Rs.50,000/- to Pradeep Jadhav. He again paid Rs.39,000/- on 28/12/2016 to accused Pradeep Jadhav and lastly, in the month of April, 2017 the accused Pradeep Jadhav again intercepted informant's car, removed Rs.14,000/- from his pocket and forcibly took his signature on a cheque in the sum of Rs.5 lakhs. Allegedly accused Pradeep Jadhav again threatened him.

13 Above chronology of sequence of events would go a long way in establishing that it was accused Pradeep Jadhav only who was constantly pestering the informant on account of earlier money lending transaction to clear the amount of interest.

14 In such circumstances, the learned APP is obviously on a wrong track when he argues that the applicant Aakash is a gang leader.

15 Having regard to the above facts, I am skeptical about the applicability of the provisions of MCOC Act, the learned Sessions Court while rejecting the application for bail has also observed that the application of provisions of MCOC Act is doubtful. If the affidavit is to read carefully then it would also show that the allegations made therein against the applicants are quite vague and do not specify pin pointedly the role of the applicants. Merely saying that the applicant Aakash is the head of the organized crime syndicate and played active role for commission of offence would not suffice the purpose. There are general allegations of criminal intimidation against the applicants herein.

16 Criminal antecedents of applicant Akash @ Balu Tanaji Khude is given in the affidavit-in-reply. It appears that he is facing C.R. No. 661/13 under Sections 395, 427, 354, 504, 506 of IPC, C.R. No. 159/13 under Sections 324, 323, 504, 506, 34 of IPC and present C.R. Since I have already discussed the material on record *qua* the applicants, in my considered opinion, the antecedents would not be a stumbling block in his way to the bail.

17 For the aforesaid reasons, the embargo under Sections 21(4) of the MCOC Act would also not be an impediment for grant of bail.

18 In view of above, I pass the following order.

ORDER

(i) Applicants- Aakash @ Balu Tanaji Khude and Samadhan Vinayak Ovhal shall be released on bail in C.R.No. 779 of 2017 registered with Satara City Police Station, District- Satara on their executing P. R. bond in the sum of Rs.25,000/- each, with one or more sureties in like amount.

(ii) The applicants shall not contact the informant or any other witnesses and shall not tamper with the evidence.

(iii) The applicants shall report concerned police station once in a month on every first Saturday between 11-00 a.m. to 1-00 p.m. till conclusion of trial.

(iv) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(v) Bail before the trial Court.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)