IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1564 OF 2019
WITH
CRIMINAL INTERIM APPLICATION (STAMP) NO. 4405 OF 2020
WITH
CRIMINAL INTERIM APPLICATION NO. 1415 OF 2020
IN
CRIMINAL BAIL APPLICATION NO. 1564 OF 2019

Rajkishor Gunnidhi Das @ Raju Pandit ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 1574 OF 2019

Richard Substatian Peter ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustomkhan for the Applicant in BA/1564/2019

Mr. Aniket Vagal for the Applicant in BA/1574/2019

Mr. Mahesh Mulye, Spl. P.P a/w Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 7th APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

2 By these applications, the applicants seek their enlargement on bail in connection with C.R. No. 20 of 2018 registered with the Yellow Gate Police Station, Mumbai, for the alleged offences punishable under Sections 285, 387, 506, 120B r/w 34 of the Indian Penal Code (`IPC') and Sections 3 and 7 (2) of the Essential Commodities Act, 1955 (`EC Act') along with Clause 5 of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractice) Order, 2005. Subsequently, the provisions of the Maharashtra Control of Organized Crime Act (`MCOC Act'), in particular, Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act were invoked.

3 Mr. Pasbola, learned counsel for the applicant-Rajkishor Gunnidhi Das @ Raju Pandit, in Bail Application No. 1564/2019 submits that the invocation of the provisions of the MCOC Act were without any basis. He submits that the facts will reveal that the complaint/FIR dated 20th September 2018 was lodged only as against accused No.1-Sonu @ Jamil Mohd. Hussain Qureshi and accused No.2-Mohd. Shish Ansari and that subsequently only on the basis of the statement of one witness, whose statement was recorded on 28th September 2018, the applicant was arrested. He submits that essentially the allegation as against the applicant is that he would purchase high speed diesel from ships and would sell the said diesel

to fishermen i.e. the applicant was allegedly involved in the business of smuggling of diesel. He submits that by no stretch of imagination, can it be said that the applicant was the gang leader and was the head of the organized crime syndicate. He submits that infact, each of the accused were carrying-on their own business. He submits that after the first charge-sheet was filed on 13th December 2018, most of the statements came to be recorded, some time in March, May and November 2019. He submits that even the telephone transcript relied upon by the prosecution does not throw light or show that the applicant was a gang leader or head of the organized crime syndicate. He submits that there are 3 cases registered as against the applicant i.e. one with Vashi Police Station (C.R. No. 272/2012) under Sections 285, 34 of the IPC and Sections 3, 7 of the EC Act and two cases with the Yellow Gate Police Station, Mumbai (C.R. No. 16/2015) for the alleged offences under Sections 379, 285, 34 of the IPC r/w Sections 3, 7 & 8 of the EC Act; and (C.R. No. 21/2017) for the alleged offences punishable under Sections 353, 336, 427, 280, 201, 120B of the IPC. He submits that out of the 11 accused, the applicant is charge-sheeted in 2 cases with 2 of the co-accused i.e. in C.R. No. 16/2015 with accused No. 5-Noor Mohd. Bacchu Qureshi @ Chhota Noora and in C.R. No. 21/2017 with accused No. 6-Nitin Gajanan Koli. He submits that taking the prosecution case as it is, the bar of Section 21(4) of the MCOC Act would not apply and as such there is no impediment in releasing the applicant on bail. He submits that the applicant is ready to abide by any of the conditions that may be imposed by this Court, if enlarged on bail.

4 Mr. Vagal, learned counsel for the applicant-Richard Substatian Peter, in Bail Application No. 1574 of 2019 submits that the applicant was not working with the co-accused-Raju Pandit as a member of his syndicate. He submits that each of the accused were doing their own business i.e. sale of diesel. He submits that a perusal of the confessional statement of the applicant-Richard will reveal that the said applicant was conducting his own business and that there was no syndicate, as alleged by the prosecution.

5 Mr. Mule, learned Special Public Prosecutor vehemently opposes the applications. He submits that the applicant-Raju Pandit is the main gang leader and that there are statements of witnesses to that effect. Learned Spl. PP relies on the statement of a witness, which is at page 115 of the application; the transcript of conversation between the applicant-Raju Pandit and the said witness and another transcript between applicant and accused No. 5-Chhota Noora (on the phone of accused No. 1's Uncle); the statement of witness dated 6th October 2018, which is at page 96 to

show that the witness was assaulted by a gang member i.e. by accused No. 10-Ghonya @ Roshan Shirodkar; the statement of witness dated 15th March 2019, which is at page No. 543 to show that the applicant is the head of the syndicate; statement of witness dated 18th March 2019, which is at page 544 also to show that the applicant is the head of the syndicate; statement of witness dated 17th May 2019, which is at page 551, with respect to demand for vessels; the statement of witnesses dated 9th and 14th November 2019, which are at pages 199 and 784; and several other statements, to show that the applicant was the boss/head of the gang. Learned Spl. P.P also relied on the confessional statement of Richard (original accused No. 4) recorded under Section 18 of the MCOC Act. Learned Spl. P.P submits that the applicant Richard's confessional statement recorded under Section 18 of the MCOC Act clearly shows his complicity as well as the complicity of the co-accused-Raju Pandit and other accused. He submits that the applicant-Raju Pandit, as the gang leader of the organized crime syndicate, would threaten people in the conduct of the business. He further submits that the applicant-Rau Pandit has 4 antecedents and that out of the said 4 cases, he is acquitted in one of the said case.

6 Perused the papers with the assistance of learned counsel for the parties. According to the complainant, Shri Borse, Police Sub-Inspector

attached to the Yellow Gate Police Station, Mumbai, when he was on patrolling duty on 18th September 2018 along with other police staff, they spotted one fishing boat `Barkat’ at Lakda Bandar at Sewree. On approaching the said boat and conducting inspection of the said boat `Barkat', they found that the said boat was unmanned at that particular time. On further search, they found 2 cans of diesel, one containing 35 litres and the other about 30-40 litres of diesel. The said Vessel was taken to Mogal Jetty and was seized under a panchanama on the very same day. The patrolling unit found that the said fishing boat was involved in the business of illegal sale of diesel. Accordingly, the police searched for the owner of the said Vessel. On 18th September 2018 at about 8:00 a.m, the owner of the said Vessel–Mohd. S. Ansari (original accused No. 2) arrived at the Yellow Gate Police Station, Mumbai, to inquire about the boat and informed PSI Shri Borse that he was the owner of the said boat bearing No.IND-MH-7-MM-386.

7 Upon further inquiry, the owner of the boat-Mohd. S. Ansari (accused No.2) disclosed that the said fishing boat was hired and was in possession of Sonu @ Jamil Mohd. Hussain Qureshi and his Uncle-Chhota Noora and that the said two persons i.e. Sonu (accused No.1) and Chhota Noora (accused No.5) had taken the said Vessel on monthly rent of

Rs. 30,000/- and on payment of deposit of Rs. 1,50,000/- from him. Mohd. S. Ansari (accused No. 2) is also alleged to have disclosed that his boat was involved in the business of smuggling of diesel and that he would receive Rs. 1/- per litre of diesel from Sonu @ Jamil and Chhota Noora i.e. accused Nos. 1 and 5 from the sale. On the basis of the said information, FIR was registered as against accused No.1-Sonu @ Jamil Qureshi and accused No. 5-Chhota Noora, with the Yellow Gate Police Station for the aforesaid offences

8 It is the prosecution case that during the course of investigation, the name of applicant-Raju Pandit was revealed, as the gang leader of the syndicate. It is the further case of the prosecution, that the applicant-Raju Pandit, as a gang leader, was carrying out smuggling of diesel along with Chhota Noora and other accused. According to the prosecution, the applicant-Raju Pandit, as the head of the organized crime syndicate, would threaten witnesses with dire consequences, if they did not purchase smuggled diesel through him or if they failed to supply boats to the applicant for ferrying smuggled diesel. It is also alleged that the applicant-Raju Pandit extorted money from witnesses, if they refused to obey his orders.

9 During investigation, on the disclosure made by one of the witnesses, it was revealed that the applicant-Raju Pandit along with other co-accused had threatened this witness with fire arms and had demanded Rs. 20 lacs as extortion money, failing which, his daughter would be kidnapped. The statement of the said witness is at page 115 of the application. The applicant-Raju Pandit was arrested in the said case on 24th September 2018 and applicant-Richard was arrested on 28th October 2018.

10 From a perusal of the statement, which is at page 115, it appears that the said witness is also in the business of sale of high speed diesel. Learned counsel for the applicant-Raju Pandit tendered a copy of the remand application in connection with C.R. No. 12/2019 in which the said witness whose statement is on page 115 is shown as a wanted accused. The said C.R. i.e. C.R. No. 12/2019 registered with the Yellow Gate Police Station, was registered for the alleged offences punishable under Section 285 of the IPC and Sections 3, 7(1)(a)(h) of the EC Act along with provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractice) Order, 2005.

11 It appears that during the course of the investigation i.e. after the arrest of accused No. 1-Sonu @ Jamil Qureshi and accused No.5-Noor

Mohd. Qureshi, the telephone transcript taken from the mobile of accused No. 1-Sonu @ Jamil Qureshi revealed the conversation between accused No. 3-Raju Pandit and accused No. 5-Chhota Noora (Uncle of accused No.1). On 28th September 2018, the statement of witness, which is at page 115 came to be recorded. On the basis of the said statement, Sections 387 and 120B of the IPC were invoked, as against the accused. The confessional statement of applicant-Richard was recorded under Section 18 of the MCOC Act, on 9th November 2018. On 13th December 2018, the first charge-sheet was filed as against the applicants and other co-accused. After the filing of charge-sheet, the statements of some more witnesses came to be recorded, some time, during the period March 2019 to November 2019. According to the prosecution, the said statements, in particular, statements recorded during March 2019 to November 2019, show that the applicant-Raju Pandit was the gang leader of the said organized crime syndicate.

12 The statement of witness at page 115, to a great extent, shows that the same is partly, hearsay and that the said witness had no personal knowledge of some of the information. He has stated that the applicant-Raju Pandit alongwith other co-accused was dealing with high speed diesel and had even demanded Rs. 20 lacs as extortion money and had threatened

to kill him. He has stated that thereafter, disputes between them were settled and that he would talk with the applicant-Raju Pandit on phone. He has further stated that from the conversation, he realised that there was a dispute with respect to accounts between him and his partners, resulting in quarrels between them. The said witness has produced the transcript of conversation between him and applicant-Raju Pandit, before the police. The said transcript is at page 65 of the application. A perusal of the said transcript *prima facie* shows that the conversation relates to business i.e. buying and selling of diesel, and is a regular conversation. A perusal of the conversation does not show that the said witness was threatened or there was any demand or extortion of money.

13 Infact, most of the statements which are allegedly incriminating, have been recorded belatedly, between March 2019 to November 2019 i.e. after more than 6 months of lodging of FIR. A perusal of the statements *prima facie* show that the accused were doing illegal business in high speed diesel, independently and at times, with each other. Most of the statements of witnesses with respect to the applicant-Raju Pandit, being the boss of the syndicate were recorded during the period from March 2019 to November 2019, belatedly. Needless to state that the evidentiary value of these statements will be tested at the time of the trial.

14 As far as the statement of applicant-Richard recorded under Section 18 of the MCOC Act, the same shows that the applicant-Raju Pandit was involved in the smuggling of high speed diesel and that if anyone smuggled diesel without his permission, he would report the same to the police, get the diesel confiscated and the people involved, arrested. The applicant-Richard, in his confessional statement has stated that hence, they would keep cordial relations with the applicant-Raju Pandit. He has further stated that in 2018, he purchased a boat worth Rs. 2,60,000/- for the purpose of fishing but his business never took off and therefore, he tried his hand at smuggling of diesel. He has stated that he knew that Chhota Noora (accused No. 5) used to hire boats and would sell oil stolen from barges. He has further stated that as he was in need of money and he knew Chhota Noora, he rented his boat at Rs. 30,000/- per month to Chhota Noora and also took a deposit of Rs. 2 lacs from him. He has further stated that in 2017, he handed over the boat to Chhota Noora for the purpose of smuggling diesel; that initially Chhota Noora paid him Rs. 50,000/-, however, later, he started avoiding making payments, as a result of which, he took the boat back from Chhota Noora in November 2017. He has further stated that in the meantime, he started selling diesel from the barge on a small-scale and started providing the same to the local fishermen. He

has further stated that Chhota Noora and the applicant-Raju Pandit assured to help him smuggle diesel with the help of Government Officers and in return, asked for Rs. 2,50,000/-. He has stated that he gave Rs. 1,00,000/- but was unable to give the balance amount to the applicant-Raju Pandit and hence, applicant-Raju Pandit was after him. He has further stated that as Chhota Noora and applicant-Raju Pandit were suffering losses, they informed the Colaba Police Station of the illegal smuggling business carried out by him (Richard), pursuant to which, he was arrested in December 2017 and his boat was confiscated. Applicant-Richard has stated that subsequently, he settled the dispute amicably with the applicant-Raju Pandit. According to the applicant-Richard, Chhota Noora and Raju Pandit cheated him and hence, he decided to provide information against them, to the Yellow Gate Police Station. He has further stated that in 2018, Raju Pandit came to his house and informed him that due to the information provided by him (Richard), action was taken against him. He has stated that Raju Pandit offered him to be a part of his business, pursuant to which, they mutually agreed to work together. He has further stated that Raju Pandit had a strong hold over the business. The confessional statement of applicant-Richard shows that he was also in the business of illegal smuggling of diesel and so was the applicant-Raju Pandit; that although initially applicant-Richard had started his own business and that later, at the behest of Raju Pandit, the police arrested him for illegal sale of diesel, after which, they started working together.

15 *Prima facie,* it appears that the applicants were individually as well as together, were doing the business of illegal sale of high speed diesel and that they would smuggle high speed diesel from Vessels and sell it to fishermen. Neither of the applicants, is the owner of the boat `Barkat', which was intercepted by the police nor has the prosecution been able to show that the applicants were involved with the high speed diesel found in the said vessel. As noted earlier, the statements of some of the witnesses, who have alleged that the applicant-Raju Pandit was the gang leader of the syndicate were recorded belatedly. The evidentiary value of the said statements will be considered by the trial Court, during trial. However, *prima facie*, having regard to the illegal activities of the applicants in selling diesel, and their antecedents, it would be appropriate to impose stringent conditions on the applicants, whilst enlarging them on bail.

16 Considering the material on record, the bar of Section 21(4) of the MCOC Act would not apply. Accordingly, the applications are allowed on the following terms and conditions :

ORDER

(i) The applicant- Rajkishor Gunnidhi Das @ Raju Pandit be enlarged on bail, on executing PR Bond in the sum of Rs. 1,00,000/- with two local solvent sureties in the like amount;

(ii) The applicant-Richard Substatian Peter be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or more sureties;

(iii) Both the applicants shall attend the Yellow Gate Police Station every fortnight, on a Monday between 9:00 a.m. to 11:00 a.m, till the conclusion of the trial;

(iv) The applicant-Rajkishor Gunnidhi Das @ Raju Pandit shall not enter the jurisdiction of the Yellow Gate Police Station (except for the purpose of attending the Yellow Gate Police Station), Uran Police Station, Mandwa Police Station and Mora Police Station, till the conclusion of the trial;

(v) The applicants shall not tamper with the evidence or attempt to influence, intimidate, threaten or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicants shall not indulge in any illegal activities;

(vii) The applicants shall inform their latest places of residence and mobile contact numbers immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(viii) The applicants to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(ix) The applicants shall file undertaking with regard to clauses (iii) to (viii) in the trial Court, within three weeks of their release;

(x) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

17 The Bail Application Nos. 1564/2019 and 1574/2019 are accordingly disposed of.

18 In view of the disposal of the Bail Application No. 1564/2019, nothing survives for consideration in Interim Application (Stamp) No. 4405/2020 and Interim Application No. 1415/2020. The same are disposed of accordingly.

19 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

20 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.