

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1434 OF 2018

Atul Kamlakar Mhatre]
R/o. Mhatre Chawl, In front of K.R. Steel]
Co., Gopal Nagar, Kalwa (E), Thane.]
(Presently lodged at Thane Prison as]
undertrial prisoner).] ... Applicant

Versus

The State of Maharashtra]
(At the instance of Kalwa Police Station] ... Respondent
vide C.R. No.301 of 2016.)

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Mr. Amrish R. Salunke with Mr. Jigar K. Agarwal for the Applicant.

Mr. R.M. Pethe, A.P.P. for the State.

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CORAM : MRS. BHARATI DANGRE, J.

DATED : 22ND MARCH, 2021.

ORDER:-

1. The Applicant came to be arrested in C.R. No.301 of 2016 registered with Kalwa Police Station on 26/11/2016, initially invoking Sections 354, 387, 452, 504, 506(2) read with Section 34 of the Indian Penal Code (“IPC”). Thereafter, the provisions of the Maharashtra Control of Organized Crime Act, 1999 (“MCOCA”)

were invoked and the Applicant is charge-sheeted for offences punishable under Sections 3(1)(ii), 3(2), 3(4) of the MCOCA. On 26/12/2016, sanction was granted to prosecute the accused persons under Section 23(2) of the MCOCA.

2. The C.R. was registered on a complaint filed by one Sameer Suresh Banda reporting that on the earlier date i.e. on 09/09/2016 at around 11.10 p.m., one Ganesh Shinde @ Kalya Ganya along with his accomplices, Ankush Gawand and one unknown person barged into their house and demanded an amount of Rs.10,000/- by putting him under the fear of life. Since the said person was known to be of criminal background, it was pleaded by the complainant that he had no money to pay, but he started hurling abuses and threatened him with dire consequences. At that time, his wife Sneha and his two sisters arrived on the spot and pleaded with them that the complainant should be spared, but no heed was paid by the accused persons to their pleadings. It is then alleged that the co-accused Ankush Gawand and the unknown person hurled abuses and his wife was touched inappropriately and pushed away and Ankush Gawand is alleged to have made inappropriate remarks pointing at his sister. It is further stated in the complaint that the unknown person pulled the other sister by his hand, towards him. The accused persons made every attempts to terrorize the entire family with an intention to extort money from them and, in an attempt, also misbehaved with the female members of the

family. This resulted into registration of the C.R.

3. The gang leader, Ganesh Shinde @ Kalya Ganya has 20 offences registered against him and, out of which, in 16 offences charge-sheets have been filed in the competent courts and, in all the said offences, the punishment prescribed is more than three years.

4. As far as the present Applicant is concerned, he has eight offences registered against him in Kalwa Police Station. The submission of the Applicant is that out of that in two offences, he has been acquitted, which in my considered opinion, loses its significance in an offence under the MCOCA.

5. The submission of learned counsel for the Applicant is that the Applicant is not named in the FIR and, he is that unknown person referred to by the complainant, who has been identified after 40 days by the sister of the complainant, with whom he is alleged to have misbehaved by touching her in inappropriate manner. The submission of learned counsel for the Applicant is that the delay in conducting the identification parade being held on 05/01/2016, where the Applicant was arrested on 26/11/2016 would prove fatal to the prosecution case and he also advanced submissions on the authenticity and credibility of the Test Identification Parade, which of course, is a matter of trial. The Applicant is identified by only the sister of the complainant and,

neither the Applicant nor his wife was involved in Test Identification Parade of the Applicant. There is no recovery from the Applicant and, according to learned counsel for the Applicant, there is no material to indict him as a member of the organized crime syndicate.

On perusal of the charge-sheet, it can be seen that the Applicant is an accused in C.R. No.185 of 2008, C.R. No.393 of 2012, C.R. No.271 of 2013 and C.R. No.230 of 2013 along with gang leader Ganesh Shinde @ Kalya Ganya. The prosecution will be required to produce the material before the Special Court to the effect that the crime is committed by an organized crime syndicate and the Applicant is a member of the said syndicate and the offence is committed with an intention to gain pecuniary advantage. The activity alleged to be performed by the crime syndicate will have to be established as a continuing unlawful activity undertaken as a member of the organized crime syndicate or on behalf of such syndicate.

6. As far as the co-accused is concerned, one Ankush Gawand (A-2) has been released on bail by the Additional Sessions Judge, Thane, but in my considered opinion, the Applicant cannot claim parity with him since he is released on bail in the backdrop that he has no criminal antecedents and also on consideration of an important aspect being on the date of the incident, he was not present at the spot as he was in custody at the relevant time.

7. However, the role attributed to the Applicant in the present C.R., though as a part of the organized crime syndicate, can be restricted to the act of pulling the sister of the complainant towards him, thereby resulting in invocation of Section 354 along with Sections 504 and 506(2) of the IPC. With the aid of Section 34 of the IPC, he can also be held responsible for the other offences, but for the time being, taking into consideration the limited role attributed to him in the present C.R., and particularly when the Applicant is incarcerated since 26/11/2016 and more than four years have passed since his arrest and even today, no charge is framed as per the Applicant, subject to the stipulation that he will not indulge in any further offences and, in any such attempt on his part, will entail cancellation of the bail granted in his favour, he is directed to be released on bail on the following conditions:

:ORDER:

- (a) The Applicant – Atul Kamlakar Mhatre shall be released on bail in C.R. No.301 of 2016 registered with Kalwa Police Station on executing P.R. bond in the sum of Rs.25,000/- and furnishing one or two sureties, in 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 co-operate with the conduct of the trial and attend the trial court on all the dates, unless exempted.
- (d) The Applicant shall not cross the limits of Thane District without permission of the Special Court where the trial is pending.

8. The Application is allowed in the aforestated terms.

(BHARATI DANGRE, J.)