IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1321 OF 2020

Mohammad Kachur Shaikh ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ashok Mundargi, Senior Counsel i/b Mr. Shailesh Chavan, for the Applicant.
Mr. H.J. Dedhia, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

DATE : 27th September, 2021

P. C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 511 of 2017 registered with the Satara City Police Station, Satara, for the alleged offences punishable under Sections 395, 323, 504 of the Indian Penal Code; under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, and , under Section 39 of the Maharashtra Money Lending (Regulation) Act.

3. Learned senior counsel for the applicant submits that

the applicant is not a member of the Organised Crime Syndicate of which Pramod @ Khandya Balasaheb Dharashivkar, is the gang leader. He submits that not a single case is registered as against the applicant either with Pramod @ Khandya Balasaheb Dharashivkar, or any other accused. In fact, he submits that the applicant has no antecedents. He further submits that the case of the complainant that he had taken money from Pramod @ Khandya Balasaheb Dharashivkar, for paying Pravin Mokashi, towards purchase of the car is false and contrary to the statement of Pravin Mokashi and Applicant's bank statement. Learned Senior Counsel tendered a compilation of documents in support of his submission to show that the money had gone from the applicant's account, thus belying the complainant's case.

4. Learned APP opposes the application. However, learned APP does not deny the fact, that the applicant has no antecedents nor is there any case registered as against the applicant with any other co-accused, including the gang leader Pramod @ Khandya Balasaheb Dharashivkar.

5. Perused the papers. According to the complainant - Amir Husain Shaikh, he had purchased an Innova Car from one Mokashi for a consideration of Rs. 5,80,000/-; that with the help of the applicant, he had paid an amount of Rs. 2,80,000/- to Shri Mokashi and had agreed to pay the balance amount i.e. Rs. 3,00,000/- within a month. It is the complainant's case that he arranged for Rs. 1,00,000/- but was still falling short of Rs. 2,00,000/-. According to the complainant, as he was in need of money, he approached the applicant, who allegedly introduced him to Pramod @ Khandya Balasaheb Dharashivkar, (original accused No. 1) in connection with the loan. It is alleged that Pramod@ Khandya Balasaheb Dharashivkar,(original accused No. 1) gave a loan of Rs. 2,00,000/- to the complainant in June/July 2014 and the complainant agreed to pay interest at the rate of 10% per month on the said amount. According to the complainant, he paid the entire amount of Rs. 3,00,000/- to the owner of the vehicle i.e. Shri Mokashi, after which the car was transferred in his name. It is the complainant's case that as he could not pay the interest to Pramod @ Khandya Balasaheb

Dharashivkar, @ Khandya, his Innova car was forcibly taken away by Pramod @ Khandya Balasaheb Dharashivkar, the applicant and others in November 2014 and his signature was forcibly taken on the transfer forms (T.T.forms). The complainant has further alleged that though he showed his willingness to repay the amount of Rs. 2,00,000/- on 05/07/2017 i.e. after about three years with agreed rate of interest, he was told that his car was already sold to recover the amount. Pursuant thereto, an F.I.R was lodged as against Pramod @ Khandya Balasaheb Dharashivkar, the applicant and others.

6. Perusal of the statement of Pravin Mokashi from whom the vehicle was purchased shows that the applicant had met him in connection with the sale of the Innova Car as an agent and that Amir Husain Shaikh (complainant) had agreed to purchase the said car for a consideration of Rs. 5,80,000/-. A perusal of the said statement of Shri Mokashi shows that Amir Shaikh paid an amount of Rs. 2,80,000/- when the car was delivered and agreed to pay the balance amount of Rs. 3,00,000/- within one month.

The said witness has further stated that on 11/06/2014, the applicant had given a cheque of Rs. 2,00,000/- and on 08/07/2014, the applicant had given a cheque of Rs. 1,00,000/-, towards the balance amount to be paid by the complainant. The bank statements tendered by the learned Senior Counsel for the applicant show that the payment of Rs. 2,00,000/- and Rs. 1,00,000/- was made by the applicant by giving two cheques. Prima facie, the said statement of Pravin Mokashi appears to be in variance with the complainant's case and does not support the complainant's case, that Pramod @ Khandya Balasaheb Dharashivkar, had given him Rs. 2,00,000/- for making payment towards the car purchased by him. Admittedly, the applicant has no antecedents. There is not a single case in which the applicant is even suspected to be involved with any of the co-accused, including the alleged gang leader Pramod @ Khandya Balasaheb Dharashivkar,. Infact, there is not a single case in which there is material to show that the applicant was an associate of Pramod @ Khandya Balasaheb Dharashivkar, anytime in the past. The applicant is in custody since 6th July 2017. Investigation is complete and charge-sheet is filed. Having regard to the aforesaid, in the facts, the embargo of Section 21(4) of the M.C.O.C. Act would not apply.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions :-

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;

(iii) The applicant shall inform his latest place of residence and mobile contact number 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;

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

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

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vi) If there is breach of any of the aforesaid conditions/ undertaking, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. 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.

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

REVATI MOHITE DERE, J.