nsc.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1884 OF 2019

Krishnakumar Balakrishna Nair ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Kuldeep S. Patil i/b Mr. Ankit R. Takle, for the Applicant.

Mr. A. R. Patil, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 1st MARCH, 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. 40 of 2018 registered with the D.C.B. C.I.D. (Anti Extortion Cell), Mumbai, for the alleged offences punishable under Sections 385, 386, 387 r/w 120B of the Indian Penal Code; under Section 3, 25 of the Arms Act and under Sections 3 (1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act (M.C.O.C. Act).

3. Learned Counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. He submits that

the applicant is a permanent resident of Hong Kong and had not even come to India during the period 2014 to 2018, when the alleged extortion took place. He submits that the applicant was in the business of finance and money transfer and had business transactions with accused No.4 – Bipin Dhotre. He submits that the alleged transfers relied upon by the prosecution will show that the said transactions were through an authorized money agent i.e. they were official transactions and not hawala transactions. He submits that except for being in contact/touch with accused No. 4 – Bipin, with whom the applicant had business transactions, there is no other material to connect the applicant with the alleged offences. He submits that there are no CDR records to show that the applicant was in touch with any other accused, much less with the gang leader – Guru Satam. He submits that the material on record will show that the applicant was not aware of the illegal activities of accused No.4 – Bipin and as such the applicant cannot be attributed with any knowledge of the illegal activities of accused no.4 – Bipin. He submits that nor is the applicant concerned with the alleged extortion by the other accused, at the instance of the gang leader. He submits that not a single case is registered as against the applicant, except the present case. He submits that in the facts, the rigors of Section 21 (4) of the M.C.O.C. Act, will not apply and as such the applicant be released on bail.

4. Learned APP opposed the application. Learned APP has filed an affidavit of Netaji Bhopale, Assistant Commissioner of Police (D Special), D.C.B. C.I.D. Mumbai dated 4th October 2019 and an additional affidavit of Shashank Sandbhor, Assistant Commissioner of Police, (D Special), D.C.B. C.I.D. Mumbai dated 11th January 2021 setting out the complicity of the applicant. Learned APP submits that there are certain Whatsapp conversation between the applicant and the money agent, through whom the money was sent by the accused No.4 – Bipin (from Mumbai) to Sameer Dewan and Nivendra Fourie (in South Africa). He submits that the applicant's mobile phone was seized and sent to the FSL and that the FSL report shows that Guru Satam's name and mobile number was deleted by the applicant. He submits that at the behest of the applicant, monies were transferred by the money agent from accused No.4 – Bipin to the aforesaid two persons. Learned APP however does not deny the fact, that the applicant has no antecedents. He also does not deny that except for the applicant being in touch with accused No.4 – Bipin, there are no CDR records to show that the applicant was in touch with any of the other accused, including the gang leader.

5. Perused the papers. According to the complainant, his cousin was in the construction business and that construction work was in progress

at Wadala, Parel and Thane; and that he was looking after the financial transactions of the construction company and was also a partner of the said company/firm. It is alleged by the complainant that soon after construction of redevelopment of a chawl in Parel commenced, they started receiving extortion calls from one Guru Satam (gang leader) from different international numbers. It is alleged that the said accused was threatening to kill him and his partner, if they refused to pay the extortion money. It is alleged by the complainant that initially money was not paid to the gang leader, however, during the period 2014 - 2017, the complainant gave extortion money to the gang leader through his accomplices on 8 – 10 occasions i.e. total amount of Rs.60,00,000/-. It is alleged that in December 2017, after receiving threatening calls from Guru Satam, the complainant and his employer gave Rs.8,00,000/- to Guru Satam through his accomplices, for the last time. The complainant has stated that in March/April 2018, although, the amount was demanded, they decided not to pay the said extortion money as their business had gone into losses. On 7th July 2018, when the complainant was in his office, he received 4 – 5 calls from a mobile number, however the complainant did not receive the said calls. Later, again one person called on his mobile and introduced himself as an accomplice of Guru Satam, pursuant to which, the complainant disconnected the phone. The said person again called and abused the complainant, however, the complainant disconnected the said call. On 11th July 2018, the complainant learnt that 3 unknown persons had visited their Parel site and enquired about the complainant and his employer and sent a message through their Site Engineer and employee to call the gangster – Guru Satam. Pursuant thereto, the complainant approached the Crime Branch, on the basis of which, the aforesaid C.R. was registered initially with the Azad Maidan Police Station, Mumbai and subsequently transferred to the Anti Extortion Cell, D.C.B. C.I.D. Mumbai.

6. During the course of investigation on the basis of secret information, original accused No.1 – Amol Vichare, original accused No.2 – Bharat Solanki and original accused No.3 – Rajesh Ambre, were arrested. During the course of investigation, the said persons named accused Nos.4 and 5 i.e. Bipin Dhotre and Deepak Lodhiya, pursuant to which, Bipin and Deepak were arrested on 13th July 2018. During the course of investigation, police found that various amounts were sent by Bipin from Mumbai to Sameer Dewan and Nivendra Fourie, who were based in South Africa. The said amounts were sent through City Foreign Exchange i.e. through a money agent. It is the prosecution case, that the applicant was helping accused No.4 - Bipin in transferring the said amounts to Sameer and Nivendra, through the money agent.

7. As far as the applicant is concerned, it is not the prosecution case that the applicant, had at any point of time called the complainant or had visited the complainant to collect the extortion money. A perusal of the money receipts/transfers shows that various amounts were sent by accused No.4 – Bipin (from Mumbai) to Sameer and Nivendra (in South Africa). Admittedly, the monies were sent through an authorized money agent and it was not a hawala transaction. A perusal of the statements, which are at page 148 and 150 shows that there was some business transactions between the applicant and accused No.4 – Bipin. Learned APP when questioned, does not dispute the fact, that the money agent who made the money transfers, his statement has not been recorded to show that it is at the instance and behest of the applicant that the said money transfers were done by accused No.4 – Bipin (from Mumbai) to Sameer and Nivendra (in South Africa). Admittedly, not a single case is registered as against the applicant with the gang leader, much less with any of the co-accused. Infact, the applicant has no antecedents. *Prima facie*, it is doubtful, whether the applicant was aware of the illegal activities of accused No.4 – Bipin or had knowledge that the money which was being sent by accused No.4 – Bipin to South Africa was extortion money. As noted above, the monies were sent through an authorized money agent and not through hawala. It is not in dispute that the passport of the applicant is with the Investigating

Agency. This being the only material against the applicant, there are reasonable grounds to believe that the applicant is not guilty of the offences with which he is charged and therefore the rigors of Section 21 (4) of the M.C.O.C. Act, will not apply.

8. 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 furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or two local sureties in the like amount;

(ii) The applicant shall attend the office of the D.C.B. C.I.D. (Anti Extortion Cell), Mumbai, 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 not leave Mumbai / Thane City, without the prior permission of the trial Court;

(iv) 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;

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

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

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

(viii) If there are two consecutive defaults either in attending the Police Station or if the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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

10. 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.

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

REVATI MOHITE DERE, J.