

CRIMINAL BAIL APPLICATION NO. 2270 OF 2019

**WITH
INTERIM APPLICATION NO. 1268 OF 2019
IN
CRIMINAL BAIL APPLICATION NO. 2270 OF 2019**

IN THE MATTER BETWEEN :

PN 1654 Mr. Vitthal Arjun Shinde from Tulinj Police Station, Nallasopara (East), Tal. Vasai, Dist. Palghar, is present

TUESDAY, 16th MARCH 2021

P.C. :

1 Heard learned senior counsel for the applicant, learned A.P.P and learned counsel for the intervener.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-380 of 2015 registered with the Tulinj Police Station, Palghar, for the alleged offences punishable under Sections 307, 324, 120B r/w 34 of the Indian Penal Code; Sections 3, 25 and 27 of the Arms Act; and Sections 3(1)(ii), 3(2) and 3(3) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

3 Learned senior counsel for the applicant submits that the allegations as against the applicant are false and baseless. He submits that the confessional statement of the applicant recorded under Section 18 of the MCOC Act has been subsequently retracted by the applicant. He submits that there is a discrepancy in what is stated by the applicant in his confessional statement under Section 18 and the the confessional statement of co-accused Imran Khan, also recorded under Section 18 of the MCOC Act, with respect to where the conspiracy was hatched, who gave the

money, etc. He submits that admittedly, the applicant was in Uttar Pradesh at the time of the alleged incident. Learned senior counsel also relied on the orders passed by this Court enlarging the co-accused Vikas Chaubey and Shailendra Lodha, on bail. He submits that there is no corroboration to the confessional statement of the applicant and co-accused Imran Khan and as such the rigours of Section 21(4) of the MCOC Act will not apply.

4 Learned A.P.P vehemently opposes the bail application. Learned A.P.P has filed an affidavit of Shri Vishwas D. Walvi, Sub-Divisional Police Officer, Boisar Division, District Palghar, to oppose the bail application. She further submits that the applicant is the gang leader and that there are several antecedents as against him. She further submits that the confessional statement of the applicant recorded under Section 18 of the MCOC Act clearly points to the complicity of the applicant and that the same is corroborated by the CDR records. She further submits that the possibility of the applicant tampering with the witnesses/evidence also cannot be ruled out. Learned A.P.P submits that during the pendency of the aforesaid application, the applicant has committed another offence. She submits that when the applicant was being produced before the trial Court, the applicant assaulted a police Officer, pursuant to which, C.R. No. 196/2019 was registered as against the applicant and others on 21st July

2019 for the alleged offences punishable under Sections 353, 186 and 34 of the Indian Penal Code.

5 Perused the papers. According to the prosecution, the first informant-Faizan Ansari, Javed (injured), Imran Khan (assailant), Vikas Choubey @ Chindi and Shailendra Lodha were friends and running business with each other's help. It is alleged by the prosecution that thereafter, the relations between them became strained and due to the business rivalry, two groups were formed i.e. Javed and Faizan on one side and the accused persons i.e. Imran, Vikas and Shailendra on the other. According to the prosecution, the applicant also had motive to kill Javed Ansari and pursuant to the same, hatched a conspiracy with other co-accused. It is alleged that pursuant to the said conspiracy hatched by the applicant (gang leader of the group), the accused persons i.e. Imran and Vikas attacked Javed Ansari on 11th August 2015. Co-accused – Imran Khan is alleged to have fired at Javed Ansari and co-accused Vikas is alleged to have assaulted Faizan with a bottle. Accordingly, FIR was registered at the instance of the complainant – Faizan Ansari with the Tulinj Police Station alleging the aforesaid offences as against Imran Khan, Vikas Choubey and Shailendra Lodha. During the course of investigation, the said accused were arrested. Investigation revealed that co-accused

Shailendra Lodha was in touch with the applicant, prior to the commission of the offence and that the applicant was also in touch with the co-accused. It is the prosecution case that the applicant (gang leader) along with the other co-accused i.e. members of his syndicate, committed a series of offences with the sole object of gaining illegal pecuniary benefit for the organised crime syndicate. During the course of investigation, the applicant was arrested on 22nd October 2015. Subsequently, provisions of the MCOC Act were invoked. The confessional statement of the applicant and co-accused – Imran Khan were recorded under Section 18 of the MCOC Act. There is no dispute that the applicant was in Uttar Pradesh at the time of the alleged incident. A perusal of the confessional statement of the applicant *prima facie* shows his complicity. In the said confessional statement, the applicant has stated the motive for eliminating Javed; that he along with other co-accused decided to eliminate Javed as he was making life difficult for everyone; that money was given to the accused Imran and Vikas for executing the work, when the applicant was in Uttar Pradesh. The applicant has, in his statement, further stated that for 15 to 20 days, Imran and Vikas were unable to execute the plan, pursuant to which, he called co-accused Shailendra asking him as to when he was going to execute the plan. He has stated that he would also call Imran and Vikas and ask, when the plan would be executed. The statement though retracted

subsequently, *prima facie* shows the complicity of the applicant in the attack on Javed. Similar is the statement of co-accused against Imran Khan (assailant). Whether or not there are discrepancies with respect to where the conspiracy was hatched or who paid the money, the same will be decided by the trial Court at the stage of trial. The said confessions are duly corroborated by the CDR records which show that the applicant was in touch with the assailants i.e. the co-accused.

6 It also appears that in 2019, whilst in jail, the applicant was heard telling some other accused to eliminate Javed (injured) in the present C.R. and accordingly, an FIR has been registered in connection with the same, i.e. C.R. No. 1338/2019.

7 The applicant has 6 cases registered as against him with the Nalasopra Police Station from the year 2007 to 2011, including cases under Sections 302 and 307 of the Indian Penal Code. It also appears that whilst on bail, the present offence has been committed. It is also pertinent to note that during the pendency of this application, another offence was registered as against the applicant and others, i.e. C.R. No. 196/2019, for assaulting the police officer on duty, when he was produced before the Court. It appears that the applicant has scant regard for the rule of law. The

possibility of the applicant threatening and intimidating the witnesses also cannot be ruled out.

8 Considering the aforesaid, it is difficult to come to the conclusion that there are no reasonable grounds for believing that the applicant is not guilty of the offence with which he is charged and that he is not likely to commit any offence, if released on bail.

9 Having regard to the aforesaid, the rigours of Section 21(4) of the MCOC Act will clearly apply. Accordingly, the application is rejected.

10 However, having regard to the fact that the applicant is in custody since 2015 i.e. for about more than 5 years, the trial of the applicant is expedited. The trial Court to conclude the case as expeditiously as possible and in any event, within 12 months from the date of receipt of this order.

11 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.

12 In view of the above order, the Interim Application also stands disposed of.

REVATI MOHITE DERE, J.