

Shambhavi
N. Shivgan

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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

BAIL APPLICATION NO.2685 OF 2019

Kiransingh Raj Purohit s/o.
Bhimsingh Raj Purohit ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Ms. Anjali Awasthi for the Applicant.

Mrs. Sharmila Kaushik, APP for the Respondent-State.

API Vijay Chavan attached to Crime Branch present.

CORAM : SANDEEP K. SHINDE J.
DATE : 18th FEBRUARY, 2021.

P.C. :

It is an application under Section 439 of the Code of Criminal Procedure, 1973 in Crime No.I-414 of 2018 registered with Vashi Police Station- Anti Extortion Cell, Navi Mumbai for the offences punishable under Sections 307, 212, 34 of the Indian Penal Code, 1860 ('IPC' for short).

2 On 14th December, 2018 on the report submitted by Senior Police Inspector, Shirish Pawar, the Joint Commissioner of Police, Navi Mumbai granted previous approval under Section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC' for short) whereafter offences punishable under Section 3(1)(ii), 3(2) and 3(4) were added in Crime No.414 of 2018.

3 The applicant was arrested on 8th November, 2018. Investigation is over and the charge-sheet has been filed. I have perused the charge-sheet and the affidavit of Ajay Ramrao Kadam, Assistant Commissioner of Police, Navi Mumbai. It contains chart of crimes registered against the applicant and the crimes registered against, Arvind Rampal Soda, a gang leader.

4 It may be stated that offence under Section 307 of the IPC has been registered on the complaint of one

Pravin Shetty against Arvind Soda and three unknown persons, that to say that the complainant did not disclose applicant's name. The prosecution would, however, rely on the statement of eye witness one Vijay Mahendra Borana. This witness claims, he knew Arvind Soda (Gang Leader) and his associates. His statement discloses that complainant was assaulted by Arvind Soda, applicant and two other persons. Prosecution would also rely on the statement of Harish Sakat, constable but he did not disclose names of unknown persons, who allegedly assaulted complainant. Reliance has also been placed on the statement of Sagar Bhimrao Patil, who had seen assault made on the complainant, by Arvind Rampal Soda, applicant and one Umesh Janjal. However, his statement was recorded on 1st January, 2019. Thus, except the statement of Vijay Mahendra Borana, there is no other evidence on record to prima-facie show the complicity of the applicant. Even assuming that the Vijay Mahendra Borana had witnessed the incident but the fact remains, he

did not attribute specific role to the applicant nor did he state that applicant was armed with any weapon. Admittedly, there is no recovery of weapon at the instance of the applicant. The investigation vis-a-vis offence under Section 307 of the IPC is over and the charge-sheet has been filed.

5 In so far as the application of provisions of the MCOCA is concerned, the prosecution, as it appears from the affidavit, has relied on crime chart of the gang leader Arvind Rampal Soda. It shows twelve offences were registered against him and it is claimed, most of the offences were committed jointly with the applicant for undue pecuniary benefits. It is, therefore, submitted on behalf of the prosecution, prima-facie, there is material to show that previous and present offences were committed on behalf of the organised crime syndicate headed by Arvind Rampal Soda or by members of the crime syndicate individually or collectively, which constitute “continuing

unlawful activity". It is also submitted that prima-facie there is some nexus between the past crime at the discredit of the applicant and the present crime. It is, therefore, contended that the applicant may not be released on bail.

6 As against the submission of the prosecution, learned counsel for the applicant has placed on record order dated 8th March, 2017 passed by the Commissioner of Police, Brihan Mumbai, inter-alia, declining the sanction under Section 23(2) of the MCOCA. Thus, it appears in Crime No.51 of 2016 registered against the gang leader and the present applicant, a proposal was moved but authority declined the sanction to prosecute the applicant and Arvind Rampal Soda. Concluding paragraph of the order dated 8th March, 2017 reads as under:

"NOW THEREFORE, I, D.D.Padsalgikar, I.P.S., Commissioner of Police, Brihan Mumbai, of the rank of the Director General of Police, in exercise of powers conferred upon me by sub-section 2 of Section 23 of the MCOC Act 1999, do hereby decline to accord sanction for the prosecution of the arrested accused 1) Arvind Rampal Sodha, 2) Kiransingh Bhimsingh

Rajpurohit u/s 3(1)(ii), 3(2), (3)(4) of MCOC Act due to I have already recorded reasons in the aforesaid paragraph No.6 which is kindly considered."

It may be stated that affidavit filed by the prosecution neither refers to order dated 8th March, 2017 nor the affidavit suggests that while granting the approval on 14th December, 2018, order dated 8th March, 2017 was shown and considered by the authority. Even assuming that the order dated 8th March, 2017 was placed before the authority for consideration, fact remains, after declining the sanction, there is no material on record to suggest that the applicant individually or jointly on behalf of the organised crime syndicate committed the offence of organised crime. In other words, after March, 2017, offences registered against the applicant and against the gang leader were characterised as individual offences.

7 Thus, in view of the facts as stated above and for the reasons stated, this Court is not satisfied that there are

reasonable grounds for believing that applicant is guilty of any offence punishable under the MCOCA.

8 In consideration of the facts stated above, application is granted. Hence, following order:

ORDER

(i) The applicant in Crime No.I-414 OF 2018 registered with Vashi Police Station, shall be released on executing PR bond for the sum of Rs.50,000/- with one or more sureties in like sum.

(ii) The applicant shall attend the concerned police station on every Monday of a week between 11 a.m. to 1 noon till the charge is framed, commencing from March, 2021.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from the date of his release on bail.

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

9 The application is accordingly allowed and disposed of.

10 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)