IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2759 OF 2019

Akhtar Abdul Qayyum Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Devasis Mitra i/b Legal Assistant for the applicant.
Ms.S.S. Kaushik, APP for the State.
Mr.I.M. Shikalar, PI and Mr.D.B. Kadu PSI attached to Shivaji Nagar police station are present in Court.

CORAM: BHARATI DANGRE, J.
DATED : 31st MARCH 2021

P.C:-

1 The applicant seek his release on bail being charge-sheeted and tried in MCOC Special Case No.13 of 2017 registered with Shivaji Nagar police station. An offence came to be registered on 25th July 2017 in Shivaji Nagar police station, thereby invoking Sections 143, 144, 147, 427, 387 IPC, in which the applicant is arraigned as accused no.1.

2 The complainant is an employee of M/s.Reliance Infra Ltd and holding the post of Head of Vigilance Department and is entrusted with the task of detection of theft of electricity in

the area covering Kurla to Vikhroli, Sakinaka, Chembur and to initiate action against the persons who are responsible for theft of electricity and submit the report to the superiors. The complainant had necessary authorization from the Company to lodge the complaint.

It was alleged that when he was present in Shivaji Nagar and undertaking an inspection of the Feeder Pillar (theft proof) installed by the Company which prohibit access to the electricity network, on 6th July 2017, at about 11.30 am, the complainant was proceeding to Chikalwadi, Road No.14 near dumping ground, Govandi, Mumbai, for installation of Feeder Pillar, one Mohd Akhtar Abdul Qayyum Khan – the present applicant and his associates objected to the installation of the feeder pillar. A mob of handful of persons abused and misbehaved with the complainant and his colleagues and thereby caused obstruction in performance of their duty. The applicant is alleged to have been armed with a chopper and by pointing out the chopper, he threatened the complainant and his colleagues and prohibited them from installing the Feeder Pillar and threatened that if they do so, he will chop off their hands and legs and would also destroy the feeder pillar. It is also alleged that he specifically uttered that if the feeder pillar is to be installed at all, an amount of Rs.50,000/- per month should be paid to him. There was a threat given by the applicant and his colleagues not to report the matter to the police and he would deal with the workers of M/s. Reliance Infra Ltd, later. The feeder pillar worth Rs.2.50 lakhs was somehow installed which incurred the incidental expenses amounting to Rs.50,000/-.

3 Another incident reported is of 7th July 2017. On the next day when the complainant along with his team proceeded to install the feeder pillar at Indira Nagar, Chikalwadi, Road No.14, Govandi, at that relevant time, the present applicant along with his accomplice was noticed breaking feeder pillar with electric cutter. The applicant who took upto his chopper, threatened the complainant and his associates with life threats and this compelled the complainant and his team to return back to the office and report the incident to his superiors.

On 8th July 2017, when the site was visited, the feeder pillar was completely broken and two black wires were unauthorizedly connected so as to have access to the electricity of Reliance Infra Ltd in an unauthorized manner.

This resulted in registration of the C.R.No. 283 of 2017 with Shivaji Nagar police station and the applicant is accused no.1 along with 9 named accused and four unknown persons.

4 During the course of investigation, the Investigating Agency, after seeking prior approval found it expedient to invoke the provisions of MCOC Act since there was sufficient evidence

to prove continuous unlawful activities of the Organized Crime Syndicate headed by the present applicant and more than one charge-sheet of the cognizable cases, having punishment of more than three years have been filed against the present applicant before the competent authority within the preceding 10 years period and the Court had taken cognizance of the charge-sheet. During the course of investigation, statement of eye witnesses came to be recorded who spoke in sync about the applicant being armed with a chopper and the threat given by him to the complainant and his associates as well as the demand of Rs.50,000/- if at all the feeder pillar is to be installed. Approval was granted to prosecute the accused persons under the provisions of MCOCA and sanction was also obtained from the Commissioner of Police, Brihan Mumbai under Section 23(2) of the MCOCA. Charge-sheet came to be filed on completion of investigation naming the applicant as a gang leader.

5 The applicant was arrested on 26th July 2017 and he seek his release on bail.

Learned counsel for the applicant vehemently submit that once upon a time, the applicant was involved in petty offences when he was resident of Shivaji Nagar of Govandi area and unknowingly, he got associated with people with criminal track record and he got entangled into criminal cases. The statement is that he was indicted as co-accused in the case since his associates were involved in some criminal cases. However, when his family intervened and asked him to severe all his ties with the people with criminal track from 2015, he shifted his residence to Andheri and even his son is born in Andheri and the applicant has sufficient proof to demonstrate that he is staying in Andheri. According to the learned counsel, the applicant is into an avocation which earn him his livelihood and since his work place is in Malad, he has no reason to visit Shivaji Nagar in Govandi area. About the alleged incident, he submit that it is completely a false version and even if the said statement is accepted, he is only alleged to have raised a chopper in his hand and there is no witness who had spoken of any attack being mounted by the said chopper. His implication in C.R.No. 283 of 2017, according to the learned counsel, is therefore questionable.

Pleading innocence of the applicant, learned counsel for the applicant seek his release on bail.

6 Learned APP, on the basis of the affidavit filed by the Assistant Commissioner of Police attached to SB-I CID, refer to the list of the criminal offences registered against the present applicant. The affidavit reveal that there are as much as 14 offences against the present applicant. Perusal of the chart of the offences contained in para 14 of the affidavit would reveal that the offences are ranging from the year 2008 and all the offences are registered with Shivaji Nagar police station. The offences vary

in nature and invoke sections 324, 326, 504, 355 of IPC and also Sections 452, 427, 506 II of IPC read with Section 34 of IPC. From the years 2008 to 2010, there are 9 offences registered which are in the nature of bodily offences. After a gap of a year, another offence is registered with Shivaji Nagar police station vide CR.No. 303/2012 under Sections 326, 452, 427, 504, 34 of the IPC. Immediately the next year, another offence is registered which is C.R.No. 99/2013 and the applicant is acquitted of the said offence. There is an offence registered in the years 2015 and 2016 respectively. Special Case No.225/2017 under the provisions of Indian Electricity Act by invoking Section 135, 138 and 150 is also registered in the same year in which the present C.R. is registered, being the year 2017. The applicant has also to his credit one Chapter case, one externment order passed on two occasions, in the year 2011 and 2013 when he was externed from the vicinity of Shivaji Nagar police station for one year and two years respectively.

7 In light of the chart reflecting the antecedents of the applicant, the submission of the learned counsel for the applicant that from the year 2015, he is not involved in any criminal activity and has mended his ways for the sake of his family, cannot be believed as there are offences registered against him in the years 2015, 2016 and 2017 with the same police station i.e. Shivaji Nagar police station. It is obvious that the applicant has

not detached his ties with the gang with whom he was working. In fact, he is assigned a role of gang leader and it is averred that he has created a reign of terror in Shivaji Nagar vicinity with his aides. The present C.R. in which the provisions of MCOCA are invoked, though revolve around an offence under the Electricity Act, the charge against the applicant is that he attempted to extort the money from the complainant for installing the feeder pillar in the area. The ingredients of MCOCA being engaged in an activity prohibited by law for the time being in force with the objection of gaining pecuniary benefits or gaining undue economy or other advantages are made out from the charge-sheet.

8 Learned counsel for the applicant has placed on record bail orders passed in respect of other co-accused and he rely upon a particular order passed by Justice Prakash Naik on 13th October 2018 in respect of two co-accused Saddam Israr Khan @ Firdous and Juber Ahmed @ Papa Wasiulla Shaikh in Criminal Bail Application No.190 of 2018 and Criminal Bail Application No.1180 of 2018, learned counsel rely upon the specific observations in the said order which are to the following effect :-

> *"To invoke the provisions of MCOC Act, there must be evidence to indicate that the accused are members of organized crime syndicate. Considering the evidence collected by the prosecution during the course of investigation, prima facie, application of the provisions of*

MCOC Act, is debatable."

9 However, in my considered opinion, on perusal of the material collected against the present applicant, the same observation cannot be of any assistance and the role attributed to the applicant is entirely different, being of a gang leader and running a gang in form of an organized syndicate for pecuniary advantages. The applicant is alleged to be a gang leader of an organized crime syndicate which has continued its unlawful activities of extortion, rioting, grievous hurt, threat to kill and it is reflected from various C.Rs registered in the past 10 years and the purpose of the unlawful activities is alleged to be pecuniary gains/ undue economic advantage using violence/threat of violence. Thus, there is ample evidence compiled in the charge-sheet to prove continuous unlawful activities of the Organized Crime Syndicate headed by the applicant and the ingredients of the offence of MCOC, being more than one charge-sheet of a cognizable offence having punishment of three years or more has been filed against the gang leader before the competent Court and the concerned Court had taken cognizance of the said charge-sheet, is satisfied.

10 In light of the aforesaid reasoning, I am not satisfied to extend any parity to the applicant qua the co-accused with the specific observation made by Justice Prakash Naik and I do not agree that the same is applicable to the present applicant.

11 For the aforesaid reasons and circumstances, the application being without any merit and substance deserve to be rejected and is accordingly rejected.

SMT. BHARATI DANGRE, J