IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2559 OF 2018
ALONGWITH
INTERIM APPLICATION (STAMP) NO.5439 OF 2020

Shankar Bhojappa Yerolla .. Applicant

Versus

State of Maharashtra .. Respondent

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Ms.Sonal Parab a/w. Mr.Kiran Varma i/b. M/s.Rajeev Sawant & Associates, Advocate for the Applicant/Appellant.

Mr.Pradip Gharat, Spl. P.P. a/w. Mr.R.M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 19, 2021.

P.C. :

This is an application preferred by Original accused No.2 for bail under Section 439 of the Criminal Procedure Code read with Section 21(4) of The Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOCA') in connection with C.R. No. 46 of 2017 registered with C.I.D. (C.R. No. 435 of 2017 registered with Dharavi Police Station) Mumbai, for the offence punishable under Sections 387, 504, 506(2) read with Section 34 of the Indian Penal Code ("IPC", for short), Section 7 of The Criminal Law Amendment Act, 1932 and Sections 3(1)(ii), 3(2), 3(4) of MCOCA.

2 The Prosecution case in brief is that, informant (WS-1) along with his mother (WS-2) were owners of a Private Limited Company. The said company was providing advice/consultancy and all other related work for S.R.A. projects and were acting as agents/representatives on behalf of the builders and slum rehabilitation societies before the Slum Rehabilitation Authority and other Government Authorities. In the month of October 2013, the members of Nirmal Nagar Society approached the informant on phone and requested him to extend his help in the slum rehabilitation project of their society and gave him papers of the said project. The informant (WS-1) and his mother (WS-3) studied the file of the said project, also visited the site of Nirmal Nagar Society and gathered necessary and relevant details of it. The informant (WS-1) and his mother (WS-3) followed up the case of Nirmal Nagar Society with the Competent Authority of S.R.A. and got the said project cleared. They also followed up the said project with its erstwhile builder, namely, Aakruti Builders. After the said project got clearance from S.R.A. Authorities, under the guise of congratulating the informant and his mother, Annadorai Devendra (A-3) called the informant (WS-1) and his mother (WS-3) at a hotel at Sion Circle. He thereafter asked them to take

permission from D.K. Rao (A-1) to further continue with the said S.R.A. Project. When the informant enquired with said Annadorai Devendra (A-3) about D.K. Rao (A-1), he informed them that the said D.K. Rao (A-1) is a gangster belonging to Chhota Rajan gang and at that relevant time, he was in Taloja Central Prison.

After about two days Mrugank C. Kolawalkar @ Miki (A-5) approached the informant and called him and his mother near Vakola. Miki Kolwalkar (A-5) told that, D.R. Rao (A-1) was having participation in the said project and made the mother of the informant talk from his mobile handset with D.K. Rao (A-1). In the said conversation D.K. Rao (A-1) told the informant to appoint Annadorai Devendra (A-3) as ‘Chief Promoter’ of the said project. That on 25th January 2014 a meeting was held between the Committee members of the Nirmal Nagar Society and the informant regarding the said S.R.A. project in the office of Sejal Builders. In the said meeting, Annadorai Devendra (A-3) demanded ₹50 crore as his commission for giving the S.R.A. project for development to the said builders. The developer offered ₹5 crore to Annadorai Devendra (A-3), who flatly refused it.

After some days, one more meeting was held in the office of Sejal Builders, where the partners of Sejal Builders, Annadorai Devendra (A-3), informant and the applicant Shankar Bhojappa Yerolla were present, wherein a heated discussion took place. The informant was made to hear on speaker phone conversation of Chhota Rajan and D.K. Rao (A-1). It was finally decided that, the builder will pay ₹40 crore to Annadorai Devendra (A-3) and ₹10 crore would be paid to Chhota Rajan gang. Memorandum of Understanding was prepared and signatures of the concerned including the present applicant were put on it. A few days later, in a meeting held at the office of Sejal Builders, the informant and his mother were promised a remuneration of ₹2 crore and 2 flats for their help, assistance and services rendered in clearing the said S.R.A. project of Nirmal Nagar Society. In due course of time, the respective agreements between builder and slum dwellers were executed. The informant and his mother personally introduced the builder to the members of the society. The accused persons thereafter started calling D.K. Rao (A-1) on phone and used to hand it over to the informant and his mother; whereupon the accused No.1 threatened them to leave the site of Nirmal Nagar S.R.A. project. Whenever the informant and his mother requested the developer for clearing their payment, accused persons used to connect them with D.K.

Rao (A-1) on phone and A-1 used to ask them as to why the informant and his mother are calling for developer for their payment. He also told them to clear payment of Annadorai Devendra (A-3).

It is the further prosecution case that, in the month of January 2017, Shankar Bhojappa Yerolla (A-2) called informant on phone and told him that D.K. Rao (A-1) wanted to meet him. At about 8.00 pm, the informant went to the office of D.K. Rao (A-1) on the second floor of Nalanda building, near Priyanka Bar at Dharavi, Mumbai. The co-accused Harun opened door. One witness in the present crime and applicant were present there. D.K. Rao (A-1) abused the informant in filthy language and threatened him that, hereinafter he would not go to the said site and call the builders for their remuneration. The informant told D.K. Rao (A-1) about the behavior of the builders was not good and the builder was avoiding to pay his dues as agreed earlier. D.K. Rao (A-1) further threatened the informant with dire consequences and directed him not to approach builder again. He also directed informant to pay ₹50 lakhs to Miki Kolawalkar (A-5). In the premise, the informant lodged the First Information Report with police.

During the course of investigation, it was revealed to the police that the organised crime syndicate headed by D.K. Rao (A-1) is actively involved in the present crime and therefore, the provisions of MCOCA have been applied to it.

3 The applicant preferred application for bail before the Special Judge designated under MCOC Act. The application was rejected by order dated 27th December, 2017.

4 Learned advocate for the applicant submitted that the applicant is in custody from 16th October, 2017. There is no progress in the trial. The applicant is not named in the FIR. FIR refers to the incident of 3rd January,2014. No role is assigned to the applicant. He is not involved in threats to tenants. He is not connected with the co-accused for being involved in any other case with him. For the first time, some overtact has been attributed to him in the year 2017. Provisions of MCOC Act are not applicable to the applicant. The applicant has been falsely implicated in this case. The informant in his statement has merely mentioned that it was the applicant who had called him to inform that Mr.Ravi Mallesh Bora had asked the first informant to meet him at Nalanda building. Admittedly, apart from the aforesaid it has not alleged that the applicant was aware of the transaction or

purpose of his visit with Ravi Mallesh Bora. The aforesaid statement clarifies that the applicant had no knowledge of the purposes of visit of first informant Ravi Bora. The applicant is involved in social and welfare activities of Madiga Samaj. Ravi Mallesh Bora alias D.K. Rao belongs to the same samaj hence the applicant was acquainted with him. He used to attend the functions organized by the applicant. The first informant in the transactions pertaining to development of Nirmal Nagar society in any manner. It is alleged that when the first informant visited Nalanda building, the applicant was seen at the door and upon going inside, the accused Ravi Bora was found sitting and he was threatened the informant. It was not alleged that the threats was issued in the presence of the accused. Although the alleged threats was issued in February 2017, the FIR was lodged on October 2017. Although, the first informant and the applicant were known to each other, the applicant has not been named in the FIR. There is unexplained delay in lodging the FIR.

5 Learned APP submitted that the accused are delaying the trial. The role of the applicant is graver then the co-accused Anil Shankar Patil, whose application was rejected by the Court vide order dated 21st January, 2021. The confessional statement of

the accused Mrugank was recorded under Section 18 of the MCOC Act. The said confessional statement shows involvement of the applicant. Learned APP pointed out statements of various witnesses. The compilation of which is tendered by the learned Special P.P., and submitted that all these witnesses have referred to the active role played by the applicant. Their names and particulars are not disclosed to protect their identity.

6 I have perused the documents on record. The confessional statement of accused Mrugank Chandranat Kolwalkar alias Micky was recorded on 31st March, 2018. The statement shows his involvement and association with the main accused and in the subject transaction. The statement of first informant mentioned that in January 2017, the applicant gave a call to the informant and told him that D.K. Rao has been released from jail. On 19th December, 2017, he called the informant and told him that he should meet D.K. Rao. The complainant went to the said place. The applicant was present at the place. Complainant went inside. Accused D.K. Rao was present in the premises. He threatened the complainant. Statement of another witness mentions that whenever the builder was approached for legal claim, the witness was threatened by

D.K. Rao and the applicant. The third witness refers to the fact that he was introduced to Micky Kolwalkar, applicant Anil Patil and Annadorai Devendra. The applicant is childhood friend of accused D.K. Rao. He used to frequently visit the house of D.K. Rao. He used to call various persons and introduce them to D.K. Rao. The proposal about redevelopment was for the first time brought with D.K. Rao by the applicant. At his instance, D.K. Rao started the project. There are various other witnesses who has stated that the applicant was actively involved and threatened them. Thus, there is no substance in the contention of the learned counsel for the applicant.

7 This Court had rejected the bail application preferred by Anil Shankar Patil. While rejecting the said application this Court had considered the role played by various accused and applicability of the provisions of MCOC Act.

9 The material on record indicate that there is more sufficient material to indicate the association of the applicant with the head of organised crime syndicate and in participation in the present crime. The applicant was aided and abetted the organise crime syndicate for pecuniary benefit arising out of

redevelopment of Nirmal Nagar project. Thus, there is strong prima facie case against the applicant to show his involvement in the crime. In the light of the embargo under Section 21(4) of the MCOC Act, no case for grant of bail is made out.

:: O R D E R ::

(i) Bail Application No.2559 of 2018, is rejected, and, disposed of accordingly;

(ii) Interim Application (Stamp) No.5439 of 2020, is disposed of.

(**PRAKASH D. NAIK, J.)**