

Neeta S.
Sawant

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3452 OF 2019

Raju @ Haidar @ Mohammed Shahid

Mohammed Ibrahim Khan

Aged : 31 years, Occu: Business,

Residing at Tin factory, Tofkhana Bazar,

Ambedkar Chowk, Dist. Munger,

State – Bihar.

.. Applicant

Versus

The State of Maharashtra

(At the instance of Narpoli Police Station,

C.R. No. 472 / 2018)

.. Respondent

Alongwith

Bail Application No. 3017 OF 2019

Jaising @ Buntty Girwasing Thakur

Aged about 34 years, Occu: Business,

Residing at Room No. 407,
Ashoka CHS, Bldg. No. 2,
Dharamvir Nagar, Tulsidham,
Thane (West).

.. Applicant

Versus

The State of Maharashtra
(At the instance of Narpoli Police Station) .. Respondent

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Mr. Amin Solkar a/w Ms. Misbaah Solkar, Advocate for
the Applicant in BA No.3452/2019.

Mr. Deepak Gautam a/w Ms. Nandini, Advocate for the
Applicant in BA No. 3017/2019.

Ms. Veera Shinde, APP for State/ Respondent in both
the matters.

HC/ R.D. Sagar – Kongaon Police Station, Bhiwandi.

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CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 10th FEBRUARY, 2021.
PRONOUNCED ON : 26th FEBRUARY, 2021.

JUDGMENT : -

1. By these applications, applicants are seeking enlargement on bail in connection with the Crime No. 472/2018 registered with Narpoli Police Station for the offences punishable under Sections, 387, 115, 120-B, 511 of the Indian Penal Code, 1860 with Section 3, 25 of the Arms Act and Section 3 (1)(ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crime Act (MCOC Act for short).

2. Prosecution case is as under;

on 6th December, 2018, crime no. 468 of 2018 came to be registered under Sections 307, 504 of the Indian Penal Code, 1860 at the instance of injured Arjun Pavitra Sarkar,

who was assaulted with country made pistol by his relative Dulal Mandal, at Kasheli Pipe Line. Accused Dulal Mandal was apprehended on 8th December, 2018 alongwith Jaisingh @ Girwasingh Bunty Thakur ('Bunty Thakur' for short - applicant in application no. 3017 / 2019).

3. Interrogation of Dulal Mandal and Bunty Thakur in crime no. 468 / 2018 revealed that they were planning to cause annoyance and terror in Thane City by targeting persons engaged in the construction business for undue pecuniary gains, being members of a gang, headed by Rai @ Rajesh Karotiya. Interrogation also, revealed that on 23rd November, 2018 Dulal Mandal, Bunty Thakur, Anju & Prabhakar, had hired a tourist a taxi (white colour Ertiga

Car) for going to Nashik. After proceeding up to Kasara above named persons asked driver, Arvind Dixit to turn back and on the way, they opened the fire and shot him dead and threw his body at isolated place, near Shahpur. Thereafter, they changed the number plate of the car. As such crime no. 551 / 2018 was registered at Shahpur Police Station under Sections 302, 201 against the unknown persons. That further interrogation of Dulal Mandal and Bunty Thakur. revealed that a meeting was held somewhere around in last week of November between Bunty Thakur, Dulal Mandal, Kali @ Pramod Nunair, Hindu Gangwasi, Rai@ Rajesh Karotiya @ Prabhakar Thakur near Kasheli, Bridge, wherein applicants and above named

accused persons conspired to target the persons engaged in the construction business and such other rich persons by kidnapping them for ransom by threatening and using the fire arms with the object of gaining undue economic or pecuniary benefits.

4. Since in the interrogation of Dulal Mandal and Bunty Thakur, aforesaid facts were divulged, on 10th December, 2018. Assistant Police Inspector Mr. Vishnu Avhal lodged a complaint with Narpoli Police Station under Sections 387 (putting person in fear of death or of grievous hurt in order to commit extortion), 115, 120-B, 511 read with offences under the Maharashtra Police Act, whereupon crime no. 472 / 2018 (subject crime for short) came to be registered

against the applicants and others.

5. In the course of investigation of subject crime, Bunty Thakur in memorandum statement disclosed that he alongwith Dulal Mandal, Kali, Anju, Rajesh and Heeru had formed a gang for committing extortion, from the persons in the construction business and in order to execute the plan, had purchased pistol, cartidges from Raju @ Haider Mohd. Shaheed Khan (applicant in application no. 3452/2019). In pursuant to the disclosure, applicant Raju @ Haider was arrested on 19th December, 2018 at Bihar in view of the allegations that he had supplied the country made pistols to Bunty Thakur and his associates for committing offences, in respect of which crime no.

468/2018 and crime no. 551/2018 were registered. In the course of investigation, three country made pistols were recovered; out of which one each from the house of accused Heeru @ Heeramand Gangwasi and accused Rajesh @ Rai and one on the disclosure made by Bunty Thakur from the house of accused Sudesh Nikkam (co-accused).

6. So far as the applicant Raju @ Haider is concerned; one country made pistol was recovered at his instance on 24th January, 2019, from the place near the building Silver Cassel, Majivade, Dist. Thane, concealed below a tree. The prosecution after effecting the recovery of the fire arms cartridges and such dangerous weapons under Section 27

of the Evidence Act at the instance of applicants herein and co-accused, invoked the provisions of MCOCA after seeking approval on 7th January, 2019; whereafter sanction under Section 23 (2) of the Act was also accorded by the Competent Authority. As such the offence under Section 3(1) (ii), 3 (2), 3 (4) of MCOCA were added to crime no. 472 / 2018. In the course of investigation, statements of witnesses were recorded under Section 164 of Cr.P.C. and after completing the investigation, the charge-sheet has been filed.

7. **Application No. 3452 / 2019** : Mr. Amin Solkar, learned Counsel for the Applicant would submit that the applicant is a resident of Bihar State and there is no

evidence at all to show his complicity, either in crime in question i.e. crime no. 472 / 2018 or in crime no. 468 / 2018 or in crime no. 551/2018. Mr. Solkar submits, it is prosecution case that the victim in crime no. 468 / 2018 (Arjun Sarkar) and in crime no. 551/ 2018 (Arvind Dixit) were assaulted by the fire arms allegedly supplied by the applicant Raju @ Haider. Mr. Solkar submits even assuming but without admitting that applicant Raju @ Haider had supplied the fire arms to Bunty Thakur, but there is no material on record to indicate that applicant abetted the commission of an offence in aforesaid two crimes, as a member of Organized Crime, or otherwise. It is submitted that except the statement of one Shekhar Chavan that he

had been to Bihar, in June, 2018 alongwith Bunty Thakur and met the applicant Raju @ Haider, there is no material on record to prima facie establish that the applicant had supplied fire arms to the co-accused for committing the offences to create annoyance and terror in the locality, with a view to make undue pecuniary gains for himself or on behalf of the Crimes Syndicate.

. Mr. Solkar submitted, that the recovery a pistol on disclosure of the applicant on 24th January, 2019 is unbelievable and far-fetched, because it is prosecution case that pistol was concealed by the applicant below a tree at Majivade in January, 2018 and recovered in January, 2019. Mr. Solkar would submit that applicant is in the custody

since 19th December, 2018. Investigation is over and trial is not likely to commence and conclude within the reasonable period. On this ground, Mr. Solkar seeks enlargement of applicant on bail.

8. Indisputably, the crime in question i.e. 472 / 2018 came to be registered, while accused Dulal Mandal and Buntty Thakur revealed their complicity in crime i.e. crime no. 551 / 2018 causing murder of Arvind Dixit, a driver of tourist vehicle and further divulging facts that car was taken charge of for committing the offence of extortion with the help of co-accused. Admittedly, the subject offence, when registered on 10th December, 2018 applicant Raju @ Haider was not cited as one of the schemers. It is only after

the disclosure made by the Bunty Thakur that the fire arms were supplied by the Raju @ Haider, he came to be arrested on 19th December, 2018, in crime in question. A fact cannot be overlooked that the complaint dated 10th December, 2018 does not indicate at all that the accused had joined a meeting of the co-accused allegedly held in the last week of November, 2018, wherein co-accused had the conspired to target the developer for pecuniary gains. Infact, the allegations of conspiracy suggests the preparation for committing the offence of extortion by means of dangerous weapons, but the allegations of the conspiracy made at the first instance completely excludes the applicant.

9. Be that as it may, the prosecution to suggest the complicity of the applicant would rely on, (i) statement of Shekhar Chavan recorded on 15th December, 2019 under Section 164 of Cr.P.C.; (ii) disclosure memorandum dated 24th January, 2019, pursuant to which, country made pistol was recovered at the instance of the applicant and (iii) amount of Rs. 11000/- transferred by Bunty Thakur in the account of applicant's wife Afrin Khan.

. So far as statement of Chavan is concerned, it reveals that in the year 2018, he had been to Bihar with accused Bunty Thakur and met the applicant, where the applicant had allegedly shown him fake Indian Currency Notes and pistol. How this statement connects applicant to crime in

question, has not be answered by the prosecution. The alleged transfer of Rs. 11000/- in the account of applicant's wife would at highest suggest that there was some transactions between the applicant and Bunty Thakur. However how transfer of Rs. 11000/- establishes link that it was transferred in consideration of supply of fire arms has not been explained. Prosecution may establish this link by leading evidence in trial. Now so far as the recovery of fire arm at the instance of applicant is concerned; it was recovered in January, 2019 which was allegedly concealed by the applicant below a tree in January, 2018, which again prima facie, does not establish link, to connect or show applicant's complicity in organised crime. Besides the

prosecution would also contend that Call Detail Records show presence of applicant in Bhiwandi, Thane area when offence in question and other offences were committed.

10. In my view, the material on which, reliance is sought to be placed by the prosecution does not prima facie suggest or indicate alleged supply of fire arms by the applicant to the co-accused was the step in execution of the conspiracy to commit the organised crime of extortion for undue pecuniary gains, nor the material sought to be used against the applicant suggests his complicity in the crime no. 468 / 2018 or 551 / 2018. Even otherwise, material on record does not show that the applicant had committed such other crimes either with the gang leader or the co-

accused in past. In fact prosecution case suggests applicant had sold fire arms for consideration. Thus, in consideration of the facts of the case and for the reasons stated, I am satisfied that there are reasonable grounds for believing that applicant is not guilty of offence of organised crime and he is not likely to commit any offence while on bail.

11. **Application No. 3017 / 2019 :**

Herein, offence against the applicant is one under Section 387 read with 120-B of IPC. Prosecution case is that applicant and Dulal Mandal (co-accused), when interrogated in crime no. 468 / 2018 divulged that in the last week of November, they hatched a plan to target the

persons engaged in the construction business to obtain money by putting them in fear of death or grievous injury, by fire arms. As such, the subject offence came to be registered on disclosure of facts by the applicant and co-accused, when they were in the police custody. Thus, the subject FIR lodged by Inspector Avhad, is based on information given by the accused to police officer in the form of a confessional statement, proof of which is prohibited under Section 25 of the Evidence Act. Be that as it may, in order to constitute an offence as laid down under Section 387 of IPC, there ought to be some visible overt act, which may reflect the natural and normal inference that the wrongdoer had in fact put a person or had made an attempt

to put any person in fear of death or grievous hurt. Thus in absence of any apparent overtact leading towards the act of extortion and thus putting any person in fear of death or grievous hurt cannot be said to be an offence committed for extortion by threat. In the case of **Ramji Singh Vs. State of Rajasthan** (1987) Criminal Law Journal 137, it is held that “without any visible sign of physical act, simply use of words is not enough to constitute that offence and in the instant case, in absence of any physical act on the part of the petitioner and also any such material, which may indicate that, as a matter of fact, the petitioner had practised extortion by threat of fear of death and hurt, the offence is not constituted.”

. Nevertheless, complaint herein suggests, acts and/ or omission was “not an attempt” but “preparation”. In view of Section 40 of IPC, attempt to commit an offence, constitute an offence and in absence of express provision as to punishment for attempt, it is punishable by aid of Section 511 IPC. Herein, prosecution has also invoked Section 511, which prima-facie in my view has no application. There is a thin line between “preparation for an offence” and “attempt to commit”. Preparation, except when it is for decoity, simplicitor is not offence.

12. Though the prosecution has made some efforts to establish the some nexus between the past crime and the subject crime, but since I am of the view that FIR is founded

on information divulged while in the police custody, a proof of which is prohibited by Section 25 of the Evidence Act and in absence any overt act by the applicant and co-accused in an 'attempt to commit the robbery', in my view a case is made out for releasing the applicant on bail.

13. Thus, in consideration of the facts of the case and after perusing the crime chart appended to the charge-sheet against the applicant, I am satisfied that there are reasonable grounds for believing that the applicant is not guilty of offence of Organized Crime and he is not likely to commit any offence while on bail.

14. Both the applications are allowed, hence the following order.

ORDER

(i) Applicant in Application No. 3452/2019 in Crime No.472/2018 registered with Narpoli Police Station is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more local sureties in the like amount;

(ii) Applicant in Application No. 3452/2019, shall report to the Investigating Officer once in a month i.e. Second Monday of each month commencing from March, 2021 between 11:00 am. to 04:00 pm. till the charge is framed;

(iii) Applicant in Application No. 3017/2019 in Crime No.468/2018 registered with Narpoli Police Station is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(iv) Applicant in Application No. 3017/2019, shall report to the Investigating Officer twice a month i.e. Second and Fourth Monday of each month commencing from March, 2021 between 11:00 am. to 04:00 pm. till the charge is framed;

(v) Both the applicants shall furnish their residential address as well as permanent address and contact details to the investigating officer within seven days of their release from jail;

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

15. Applications are allowed and disposed of accordingly.

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

(SANDEEP K. SHINDE J.)

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