

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3087 OF 2019

Rushikesh @ Banda Somnath Kashid,
Age 23 years, r/o.At Post Medad, Ta.Baramati,
District Pune, presently lodged in Yerwada
Central Prison.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Hrishikesh Mundargi i/by Ms.Swarali Joglekar for applicant
Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th July 2021

PC :

1. The applicant is seeking bail in R No.I-189 of 2018 registered with Saswad Police Station for offences under Sections 395, 341, 392 r/w 34 and 120-B of Indian Penal Code. Subsequently Sections 3(1) (ii), 4(4) of MCOC Act were invoked against accused. The applicant was arrested on 2nd June 2018.

2. The case of prosecution is that on 22nd May 2018 the first informant was instructed by his employer to pick up a consignment from company and transport the same to Fursungi, Pune. The informant proceeded in his truck to pick up the consignment. The consignment consisted of 924 boxes of Whiskey. Each box contained 48 bottles. The total cost of the consignment was Rs.55,25,740/-. The first informant was driving the vehicle carrying the consignment. He went to the petrol pump. He met another truck driver. Thereafter he proceeded to deliver the consignment. The informant

proceeded through Lonand-Nira-Jejuri-Saswad road and reached at Kharad village. A person on motorcycle intercepted the vehicle of complainant. Two persons assaulted the informant. Two more unknown persons came on motorcycle and assaulted him. The informant was taken to unknown location. He was brought back to the truck after some time. Subsequently he noticed that the consignment was missing from truck. He went to Jejuri Police Station and lodged the report. Several accused arrested during the course of investigation. The confessional statement of accused were recorded u/s.18 of MCOC Act. Charge sheet was filed against applicant and other accused.

3. The applicant preferred application for bail before Special Judge under MCOC Act. The said application was rejected by order dated 13th February 2019. It is pertinent to note that in paragraph 14 of the said order the learned Special Judge has observed that besides present offence, Crime No.330 2013 was registered against applicant with Baramati Taluka Police Station for offence u/s.326 IPC and after the trial he has been acquitted. There was no other charge sheet against applicant. In such circumstances applicability of provisions of MCOC Act is doubtful. Learned Judge, however, further observed that there is strong evidence against applicant to show his involvement in commission of offence of dacoity and some of the accused are absconding, and considering the nature of offence and the manner in which it is committed, the application was rejected.

4. Learned counsel for applicant has submitted that the applicant is in custody since last three years. No other case is pending against

applicant. The provisions of MCOC Act are not attracted against applicant. He is not involved in any other case. There is no evidence to establish that the applicant was a member of crime syndicate headed by main accused Prakash Gaikwad. In the past one case was registered against him which was also not with the gang leader and the said case has also resulted in acquittal. The gang leader has been granted bail by the Sessions Court and while granting bail to him it has been observed that there is no cogent evidence against him to show his involvement in the offence and in spite of antecedents against him, bail was granted to him. It is further submitted that prosecution is relying upon alleged recovery at the instance of applicant. However, one of the co-accused (accused no.9 Chetan Gaikwad) has been granted bail, although the prosecution is relying upon recovery at his instance. The accused no.6 Sudhir Gaikwad and accused no.7 Tushar Vibhute were also granted bail. Prosecution is also relying upon identification of applicant. However, pursuant to the alleged identification parade, statement of the identifying witness was recorded, which has not attributed specific overt act to the applicant. The prosecution is also relying upon confessional statement of applicant which has been retracted by him on the ground that he was assaulted and forced to confess the crime. Learned Special Judge while granting bail to the gang leader had taken into consideration the factum of confession of applicant and it was observed that the same cannot be used against the said co-accused.

5. Learned APP submitted that there is sufficient evidence showing involvement of applicant in the offence. The provisions of MCOC Act are applied in this case. There are restrictions in granting

bail to a person who has been prosecuted under the provisions of MCOC Act. The distinguishing feature between applicant and the co-accused who are granted bail, is that they were not identified and there is confessional statement of applicant recorded u/s.18 of MCOC Act. The issue relating to retraction cannot be considered at this stage and it will have to be appreciated during trial. The prosecution has filed an affidavit-in-reply opposing application for bail.

6. As stated above, the applicant is in custody for a period of about three years. There is no progress in the trial. The prosecution is relying upon confessional statement of applicant which was purportedly recorded u/s.18 of MCOC Act. On the basis of confessional statement the prosecution case is that the applicant is a member of crime syndicate headed by accused Prakash Gaikwad. Thus, to invoke the provisions of MCOC Act, it has been alleged that applicant is a member of crime syndicate headed by aforesaid accused. I have perused the affidavit filed by prosecution and the chart produced by prosecution which is part of charge sheet, which indicate the number of cases registered against accused and conviction of other accused with the gang leader. Undisputedly no case is registered against applicant along with gang leader. The order granting bail to gang leader Prakash Gaikwad mentions that there were about six cases registered against him. He has criminal antecedents. However, there is no material on record to show that he along with co-accused has committed offence. In the absence of any other evidence bail cannot be deprived to him merely because of criminal antecedents. The allegations in the FIR would indicate involvement of four persons. The accused nos.1 and 2 were arrested.

The part of stolen property was recovered. At the instance of applicant 212 boxes of Whiskey were recovered. The fact remains that whether applicant can be further detained on account of invocation of provisions of MCOC Act. Since the gang leader has been granted bail with an observation that his involvement is not prima facie established, the applicant cannot be detained further on the assertion that as a member of crime syndicate headed by the co-accused, the said offence was committed. Other accused, as stated above, were also granted bail by Special Court. Charge has not been framed and it is not clear as to when trial would commence. Considering these aspects, there is no impediment in granting bail to the applicant in spite of embargo under Section 21(4) of MCOC Act. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-189 of 2018 registered with Saswad Police Station on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Saswad Police Station once in three months on first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant shall regularly attend Trial Court on the dates of hearing, unless exempted by the Special Court.

(PRAKASH D. NAIK, J.)