IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3296 OF 2019

Rakesh Babu Chalwadi .. Applicant
Versus
The State of Maharashtra .. Respondent

…

Mr. Nitin Sejpal with Mr.Akshata Desai for the applicant.
Ms.S.S. Kaushik, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 22nd MARCH 2021.

P.C:-

1 By the present application, the applicant seek his release on bail on being charge-sheeted in MCOC case which is pending before the Special Judge, District Thane and numbered as Special Case No.10 of 2017.

2 Heard Mr.Nitin Sejpal, Learned counsel for the applicant and Ms. S.S. Kaushik, learned APP for the State.

3 The complainant, who is engaged in the business of Holiday Membership Commission Agent at Talasari police station lodged a complaint on 19th July 2016 alleging that he is resident of the address given in the complaint and on 18th July 2016, when

he returned to his house along with his family at around 7.30 to 8.00 p.m, all the lights in the house were SWITCHED on. He also stated that there are CCTV cameras fitted in the precinct of his house but they are switched off during the day and after 9'O clock, they are switched on.

After he returned home on the said day, his parents and his niece were watching Television and his wife was engaged in cooking. At that time, he had gone on the first floor for having bath. Three to four unknown persons arrived at his door and inquired from his niece about the applicant. His niece approached his room and informed him that some persons have come to meet him. At the very relevant time, three unknown persons in the age group of 25 – 30 years followed by his mother and wife also arrived in the room. He gave description of the said persons as one wearing black shirt and being masked, holding knife, the other person wearing red t-shirt and one who was little lean, had kept his face open and was armed with a knife. The person with red shirt and having black colour mask on his face was armed with a pistol. They demanded money from him by brandishing the weapons at him, and asked for the keys of the locker. At that time, the complainant pleaded before them not to cause any harm to him or his family and they can take whatever valuables are there in the house. He himself handed over an amount of Rs.30,000/- + Rs.10,000/-. They were repeatedly asking the complainant where he had concealed Rs.One crore and when he did not relent to their demand, they assaulted him. His mother and wife were made to sit down and their hands were tied and mouth fixed by a tape. The assailants thereafter opened the almirah and took away gold ornaments worth Rs.3,25,000/- and his mobile phone of Samsung Company and also took along with them the keys of his jeep. Being scared by the unprecedented incident, his wife somehow managed to get freed and rescued the complainant and his mother and thereafter switched on the button of the CCTV camera. When the complainant was in search of his son Siddhant, he along with his niece Lalita were seated on the sofa set and were being guarded by one person and his father was locked into the bathroom.

4 On the complaint being lodged, the description of the articles was given and the estimated value was mentioned as Rs.3,81,000/-. The complaint was lodged against four unknown persons in the age group of 25 to 30 and Section 394, 342, 506 IPC with Section 3, 25 of the Arms Act were invoked. Pertinent to note that a supplementary statement of the complainant came to be recorded on 1st September 2016 and in the said complaint, the complainant added some more articles to the list of the articles which were reported to be stolen by him on 19th July 2006 and these additional articles which were alleged to be stolen were described to be worth Rs.10,64,300/-. On 23rd October 2016, another supplementary statement came to be recorded and the

complainant stated that the police had recovered the ornaments from the arrested accused and they were asked to identify the gold ornaments by the remaining persons in the police station. He identified the said ornaments to be the same ornaments which were stolen from his house on 18th July 2016. The complainant and the family members wee forwarded for medical examination and the Doctor certified the injuries on the complainant to be simple injuries.

5 The applicant came to be arrested on 5th August 2016 in connection to the said crime. The complainant and the family members wee forwarded for medical examination and the Doctor certified the injuries on the complainant to be simple injuries. It is this offence in which the provisions of MCOCA have been invoked, since during investigation, it is revealed that accused Sandeep Brijlal Chauhan had formed an Organized Crime Syndicate and the applicant is alleged to be a Member of the said syndicate and the aforesaid offence is alleged to have been committed on behalf of the Organized Crime Syndicate which is engaged in the activity of house breaking, dacoity, robbery by using criminal force and several offences are registered against the accused persons in distinct police stations. Noting that there was sufficient evidence to prove continuous unlawful activities of the Organized Crime Syndicate headed by gang leader and more than one charge-sheet of cognizable cases having punishment of three

years or more, has been filed against the gang leader before the competent court within preceding 10 years and the Competent Court had taken cognizance of the charge-sheet, a proposal was forwarded to invoke the provisions of MCOC and in particular, Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act. The Addl Director General of Police (Law and Order) Maharashtra was pleased to accord sanction under Section 23(2) of MCOC Act on 11th April 2017.

6 The Bail Application is opposed by the learned APP who rely upon the affidavit filed by the Sub-Divisonal Officer, Dahanu division, Palghar on 3rd February 2021. Learned APP state that during the course of investigation, various statements were recorded and compiled in the charge-sheet and there is recovery of one motor cycle from the present applicant and this recovery has been effected under Section 27 of the Evidence Act as the vehicle to be used in commission of offence. The vehicle is registered in the name of the present applicant. Further, material which is relied upon for implication of the accused/applicant is his identification by two of the witnesses and this, according to the learned APP establish his involvement in the present offence. Further, an amount of Rs.2,508/- is also recovered from the applicant, is the submission of the learned APP.

7 In order to attract the provisions of MCOC, the material which is required to be compiled must *prima facie* establish the offence being committed by the Organized Crime Syndicate. The Act of 1999 define Organized Crime Syndicate as a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime. Organized Crime is a continuing unlawful activity by an individual, singly or jointly, either as a member of an *organised crime syndicate* or on behalf of such *syndicate*, by use of violence or threat of violence or intimidation or coercion, or other unlawful *means*, with the objective of gaining pecuniary benefits or undue economic or other advantage for himself or for any other person. The material to be used for inculpating a person as a member of the organized crime must satisfy the aforesaid ingredients, being that the offence is committed by an organized crime which is continuing its unlawful activity and the crime is committed by an individual single or jointly, either as a Member of the Syndicate or on behalf of such a syndicate.

8 The case of the prosecution is that the applicant along with other co-accused had hatched a criminal conspiracy with the intention to gain pecuniary benefit and thereby formed a gang which operated as Organized Crime Syndicate whose leader is Sandeep Chauhan. Sandeep Chauhan has to its credit three offences registered with Shivaji Nagar police station and one

offence registered with Ambernath police station between the years 2011 to 2015. The fifth offence is the present C.R registered with Talasari police station, being C.R. No. 97 of 2016. As far as the present applicant is concerned, there is one offence registered against him in the year 2016 in Ambernath police station where sections 454, 457, 380 of IPC has been invoked. Perusal of the offences registered against the gang leader would reveal that the applicant has no commonality in any of the offences to the credit of gang leader. The essence of MCOC is the commission of crime by an organized crime syndicate. The applicant is not associated with the gang leader or any other members of the alleged crime syndicate in any of the offences.

He may be guilty of commission of offences in question i.e. C.R.No. 97 of 2016 and can be charged under Section 395 and 397 as well as other offences under the Indian Penal Code relating to the said offences being committed as per the version of the complainant since the applicant is being identified as the one of the person who had barged entry into his house and robbed him of the valuables but something more than an individual offence is necessary, in a case where MCOCA is invoked. The bar which would operate under sub-section (4) of Section 21 of the MCOC Act is applicable only qua an offence under MCOCA, *prima facie* the ingredients of the same being made out. The Test Identification Parade is conducted after a gap of eight months. However, the efficacy of truthfulness of the Test

Identification Parade is a matter of trial. The applicant has also relied upon an order in respect of a co-accused Umesh Farara (Criminal Bail Application No. 593 of 2019) to be arrested on the same C.R. on 5th August 2016 and who is alleged to be a part of the conspiracy holding that the rigors of Section 21(4) of IPC are not attracted, on 5th December 2019, the applicant was released on bail by Justice S.K.Shinde.

8 On perusal of the material compiled in the charge-sheet, *prima facie* I am satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence under MCOCA, since the prosecution at this stage has no material with it implicating him as a Member of the Organized Crime Syndicate. His antecedents reveal only one offence registered in the year 2016 and there is no material placed by the prosecution on record to prove that he will commit any other offence while on bail and what is only expressed is a possibility of he tampering the witnesses and committing such type of offences, a vague phraseology. What prompt the prosecution to arrive at such a hypothesis is not indicated in the affidavit.

9 In light of the above, the applicant is incarcerated since 5th August 2016 and it is more than four years that he is behind bar. Taking into consideration the nature of material compiled against him in the charge-sheet and particularly when

the investigation qua the said C.R is complete and there is also a recovery from him and he is identified in T.I. Parade which is conducted after 8 months, there is no reason why he should be kept behind bar pending trial. The applicant is therefore, entitled to be released on bail.

Needless to say that the observations made are relied on decision of the present application and the Special Court will not be influenced by the said observation during the course of trial.

ORDER

Application is allowed.

(a) The Applicant – Rakesh Babu Chalwadi, in connection with C.R.No. I-97 of 2016 registered with Talasari Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(d) The Applicant shall make himself available as and when required by the Investigating Officer.

SMT. BHARATI DANGRE, J

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