

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3329 OF 2019

Kiran Madhav Hazare	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mr. Nitin Sejpal for the applicant.
Mr. R.M. Pethe, APP for the State.
PSI Sachin Ingale from Kopergaon Taluka P.Stn present.

CORAM: BHARATI DANGRE, J.
DATED : 7th APRIL 2021

P.C:-

1 The applicant is charge-sheeted in C.R.No. I-17 of 2018 registered with Kopergaon Taluka police station under Sections 307, 397, 395, 379, 353, 333, 332, 427, 212, 201, 143, 147, 148, 149 of IPC, Section 7 of the Criminal Law Amendment Act, Section 37(1)(3), 135 of the Mumbai Police Act and Section 3 of the Prevention of Damages to Public Property Act.

2 In relation to the said crime, the applicant came to be arrested on 16th March 2018 along with other co-accused persons. On registration of the offence, on 5th April 2018, a proposal was submitted for invoking the provisions of MCOCA and on 11th

May 2018, prior approval was granted whereas the Directorate General of Police on 10th August 2018 accorded sanction for prosecution of the accused persons.

3 The applicant seek his release on bail in the aforesaid backdrop and apart from his argument that the C.R registered with Kopergaon police station which has invoked the provisions of MCOCA, no case is made out under Section 307 of the IPC, the prime offence for which he along with other co-accused came to be arrested. Learned counsel would also submit that the material placed on record for invoking the provisions of MCOCA falls short of the ingredients of the offence under Section 3(1)(ii) and 3(3) and 3(4) of the MCOCA. Another ground which is pressed into service is the release of co-accused on bail and the submission is merely on the pretext that the applicant is a gang leader, he remain incarcerated for last four years in absence of any inculpatory material compiled in the charge-sheet.

4 I have heard the learned counsel for the applicant and the learned APP who has placed on record the sanction order as well as the order which were forwarded for seeking prior approval.

 The offence which came to be registered with Kopergaon police station, invoke section 307 IPC along with the other sections of the IPC and the said offence is registered on the

complaint filed by Yogesh Dattatraya Palve, Aval Karkoon, Sub-Divisional Officer, Shirdi, who stated that on 13th February 2018, in the morning hours, when he was on a duty, prohibiting illegal excavation and transportation of sand along with the Talathi as well as a clerk and the Kotwal in the official vehicle, a dumper vide no. MH-15-CR-8407 loaded with sand crossed their path. When it was asked to halt, the driver of the said dumper drove the dumper towards their vehicle with an intention to cause harm to them. At that time, the white colour Mahendra SUV arrived there. It is alleged that the applicant was one of the 7 to 8 unknown persons present in the vehicle. They threatened the inspection squad with dire consequences. It is further alleged that when they were following the said dumper which fled from the spot, the SUV car again crossed them and 7 to 8 persons armed with wooden rods descended from the said vehicle. The applicant is alleged to be one amongst them and it is he who threatened to kill them if his vehicle is not released. On being reminded that they are discharging their official duty and there should be no impediment in discharge of their official duty, it is alleged that the applicant assaulted the complainant and one Mr. Patil accompanying him by means of wooden sticks in their hand and the attack has been referred to a severe one. Further, it is also alleged that with the help of wooden sticks, the window panes of the official vehicle both at the front and rear side were damaged, the worth of damage is estimated to the tune of Rs.20,000/-.

5 It is in this C.R the provisions of the MCOCA are involved on the ground that the said offence has been committed by the accused persons as an Organized Crime Syndicate, and the applicant is alleged to be the leader of the crime syndicate, against whom more than one charge-sheet has been filed before the competent court within the preceding period of 10 years and the concerned Court had taken cognizance of the same.

6 In order to fortify the incident which has been reported with the Kopargaon police station by the Sub Divisional Officer, the medical papers are compiled in the charge-sheet. The complainant Yogesh was referred to the Rural Hospital Kopargaon and came to be examined on 13th February 2018 at 10.30 a.m i.e. on the same day and the following injuries are mentioned in the certificate issued by the Medical Officer, Rural Hospital, Kopargaon.

- (1) Abrasion – over Rt hand, $\frac{1}{2}$ x $\frac{1}{2}$ cm, oblique, red colour
- (2) Blunt trauma over back of rt side of chest,
- (3) Pain, tenderness, over rt Palm at base of finger, bruise red colour, 6 x 5 cm bruise.

The age of the injuries is described to be within 24 hours and surprisingly, the Doctor record the injuries to be dangerous one. One fails to understand as to how the abrasion and a blunt

trauma without its specification would attract the definition of 'dangerous injury'.

7 The medical certificate of Bhau Patil Jaywant Jadhav, another injured is also compiled in the charge-sheet who was examined at 11.15 a.m on the date of the incident and the injury certificate issued by the same Medical Officer note the following injuries

- (1) Abrasion – over Rt finger dorsal side, 0.3 x 2 cm oblique red colour
- (2) Bruise over right hand dorsal site pain & tenderness present, 6 x 5 cm, oblique red colour.

These injuries are also described as dangerous one, though it is nothing but an abrasion and a bruise.

Learned counsel for the applicant is therefore, justified in submitting that *prima facie* no case is made out for invoking Section 307 of IPC in C.R.No. I-17 of 2018.

8 Apart from the said submission, the learned counsel has invited my attention to the sanction order which do not make any reference to which of the charge-sheets filed against the crime syndicate has been relied upon for invoking the provisions of MCOCA. The chart of the offences which has been tendered by the learned APP Mr.Pethe and which correspond to the affidavit which has been filed by the Superintendent of Police, record as many as 16 offences against the present applicant. It is to be

noted that out of these three offences are of the year 2007, but in respect of two of the offences, charge-sheet has been filed in the year 2007 itself and this cannot be looked into since the essential ingredients of an unlawful activity as defined under the MCOCA is in respect of the activity of a syndicate of which more than one charge-sheets have been filed before the competent Court within preceding period of 10 years and the Court has taken cognizance of such charge-sheet.

9 Further, from the sanction order as well as the chart showing the commonality of other accused persons with the applicant who is alleged to be the gang leader, no material is reflective that the persons accused in C.R.No. I-17 of 2018 has its members acting as an Organized Crime Syndicate or that the said crime has been committed either singly or collectively in the capacity as a syndicate or the gang. The Organized Crime has been assigned a definite connotation under Section 2(e) of the MCOCA which intent to cover any continuing unlawful activity by an individual, singly or jointly either as a member of an Organized 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 gaining or undue economic or other advantage for himself or any other persons. The necessary ingredients that the said offence was committed for obtaining any pecuniary benefit

or gaining undue economic advantage, is prima facie conspicuously not to be seen in the present C.R, taken and read as a whole and particularly, when it falls short of invocation of offence under Section 307 IPC.

10 Another ground which has been pressed into service is the co-accused being released on bail and this include accused accused Akshay Barse, Yogesh Sukhdeo Bhad, Suraj Prakash Thakur, Sagar Bhimrao Dhotre, Ajay Mahire, Ravi Rama More and Pratik Dnyandeo Gondkar. The orders passed on the application preferred by the applicants are placed on record and I see no reason why the benefit of the said order cannot be extended to the present applicant merely on the ground that he has been assigned a role of a gang leader. No doubt, individually, there are multiple offences registered against the present applicant but for invoking the provisions of MCOC Act, it is not the severity of the offences committed individually, but the offences which are committed by or on behalf of the syndicate which operates in an organized manner are to be taken cognizance of. Prima facie, since the invocation of the MCOC itself appear to be doubtful, the applicant who has been incarcerated for more than two years and since it is informed that till date, even the charge has not been framed, the applicant is held entitled to be released on bail subject to a strict stipulation of he not entering the jurisdiction of Kopergaon but at the same time, his presence for

the trial will be ensured by imposing the following conditions. 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

- (a) The Applicant – Kiran Madhav Hazare shall be released on bail in connection with C.R.No.I-17 of 2018 registered with Kopargaon Police Station on furnishing P.R. bond to the extent of Rs.50,000/- 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.
- (c) The Applicant should not tamper with evidence.
- (d) The Applicant shall not enter jurisdiction of Kopargaon till framing of charge. He shall continue to reside in Sangamner Taluka and he shall mark his presence on every first Monday of every month in the police station at Sangamner. The in-charge of the Sangamner Police Station shall forward his attendance report quarterly to the

Kopergaon Taluka Police Station where the crime is registered.

(e) Once the charge is framed, the Special Court will be at liberty to impose a condition of marking the presence of the applicant in the Special Court during the pendency of the trial or any other condition as the Court deem fit.

11 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J