IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3582 OF 2019

Rajendra @ Raju Dharamsi Dave @ Topi .. Applicant

Versus

The Deputy Superintendent of Police
And Anr. .. Respondents

……

Mr.Gaurav Lele i/b. Ms.Sudha Dwivedi, Advocate for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent – State.

……

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 11, 2021.

P.C. :

The applicant is seeking bail in connection with C.R.No.136 of 2019, registered with Rajarampuri Police Station, Kohlapur, for the offences punishable under Sections 143, 147, 149, 395, 307, 353, 332, 155, 109, 324, 323 and 427 of Indian Penal Code ("IPC", for short) and Sections 4 and 5 of Prevention of Gambling Act.

RAJESHRI PRAKASH AHER
Digitally signed by RAJESHRI PRAKASH AHER
Date: 2021.08.12 13:37:45 +0530

2 The applicant was arrested on 5th August, 2019. Prior approval was obtained under Section 23(1)(A) on 10th April, 2019,

for invoking the provisions of the MCOC Act. Sanction for prosecution under the provisions of MCOC Act was granted on 4th October, 2019. Provisions of sections 3(1)(2), 3(2), 3(4) and 3(5) of MCOC Act were applied. On completing investigation, charge – sheet was filed.

3 The case of the prosecution is that on 8th April, 2019, raid was conducted at Matka Den of accused no.26 Salim Yasim Mulla. While police were recording panchanama, accused no.1 (wife of accused no.26) instigated other accused who attacked the police and attempted to commit murder, prevented the police from performing their duty, and, tried to snatch the cash from the police which was seized from the house of accused Nos.1 and 26. About 29 accused were arrested. Accused no.26 and others were members of organized crime syndicate indulging in continuous unlawful activity. The kingpin of the gang was accused no.26, Salim Yasim Mulla. Various cases were registered against him such as dacoity, extortion, unlawful business of betting, attempt to commit murder etc. During the course of investigation, it was revealed that accused no.26 Salim Yasim Mulla used to sent money received from illegal Matka business and acquired huge property out of the proceeds received from the illegal Matka

business. Accused no.30 Rakesh Agarwal, 31 Zakir Abdul Mirajkar, 32 Ankush Maruti Vagre, 33 Sarad Devasrao Korane, 36 Jayesh Shevantilal Shah, 37 Shailesh Gunvantirai Maniyar, 38, Viral Prakash Sawla, 39 Jitendra Kantilal Gosalia, 40 Jayesh Sawla, 41 Rajendra Dave, 42 Manish Kishor Agarwal, 43 Samrat Subhash Korane and 44 Prakash Sawla facilitated the other accused particularly accused no.26 Salim Mulla for committing the organise crime. They were members of organised crime syndicate headed by accused no.26 Salim Mulla. During personal search of the applicant, mobile hand set of the applicant was seized under arrest panchanama. On completing investigation, charge–sheet was filed.

4 The applicant preferred an application for bail before the Special Court under the MCOC Act. The said application was rejected vide order dated 5th December, 2019.

5 Some of the accused had challenged the proceedings by preferring Writ Petition before the Division Bench of this Court. The challenge in the said petition was to the prosecution of the said petitioners under the penal provisions of IPC and the MCOC Act. The contention of the petitioners therein was that the

provisions of MCOC Act are not applicable. The said accused were not present at the time of incident and they do no have any connection with accused no.26 or the alleged crime syndicate. The Division Bench vide order dated 21st April, 2020, dismissed the said petition. Being aggrieved by the said order, the petitioners therein had approached the Apex Court and the Special Leave Petition in this regard is pending before the Apex Court.

6 Initially this application was adjourned awaiting the decision of the Hon’ble Supreme Court. Learned counsel for the applicant,however, submitted that the said petitions are pending for a long time and the applicant is in custody for substantial period of time. The applicant would pursue his application for bail.

7 Learned counsel for the applicant submitted that the applicant has not been named in the FIR. He was not present at the place of incident at the time of the alleged raid. He is not involved in commission of offences registered vide C.N.No.136 of 2019. He has not participated in the incident of attacking police or obstructing them in performing their duties. He has not

participated in the assault. There are no criminal antecedents against the applicant. He is not part of the organised crime syndicate headed by accused no.26. No other case is registered against the applicant. He is not involved in any crime with accused no.26. The applicant has not been named in the approval obtained under Section 23(1)(A) of the MCOC Act. The confessional statement of applicant is not sufficient to invoke provisions of MCOC Act. It has been retracted. It is also submitted that the applicant is 66 years old person. Further investigation is conducted without permission of the Court. The applicant is in custody for a period of about two years. He relied upon the decision of the Supreme Court in the case of ***Ranjitsingh Sharma Vs. State of Maharashtra and Anr.***[1]; decision dated 5th August, 2011, delivered by the Full Bench of this Court in ***Criminal Appeal No.20 of 2021 and other connected matters (in the case of State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya and Anr.);*** the decision of the Apex Court in the case of ***Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Anr.***[2]; the decision in the case of ***Vinay Tyagi Vs. Irshad Ali Alias Deepak and Ors.***[3].

1 (2005) 5 SCC 294
2 (2019) 17 SCC 1
3 (2013) 5 SCC 762

8 Learned APP submitted that there is sufficient evidence invoking the provisions of MCOC Act against the applicant. The co-accused had preferred Writ Petition before this Court, challenging the applicability of the provisions of MCOC Act, and, theoe petitions were dismissed and the Special Leave Petition challenging the said decision is pending before the Apex Court. Learned APP relied upon the observations of the Division Bench of this Court in order dated 21st April, 2020, passed in Writ Petition No.2899 of 2019 and other connected matters. He relied upon observations in paragraph nos.14 and 17 of the said decision. Learned APP drew my attention to various statements recorded under Sections 161 and 164 of Cr.P.C., and, submitted that specific overtact has been attributed to the applicant which shows that he is associated with crime syndicate headed by accused no.26. Learned APP also strongly relied upon the confessional statements of the applicant as well as other accused, and submitted that the applicant was involved in assisting the accused no.26 in purchasing various properties out of the amount earned by the co-accused as crime proceed. At this stage, the veracity of the confessional statements cannot be doubted. Merely on the ground that applicant was not present at the place of incident when the raid was conducted, he could not be

absolved from the offence. It is submitted that the case is being investigated on the footing that accused who were present at the scene of offence and the other accused were acting as crime syndicate headed by accused no.26 by engaging in unlawful activities for pecuniary advantage. There is sufficient evidence to show the complicity of the applicant in the crime. The mobile handset of the applicant was seized on his personal search. The WhatsApp note forwarded to co-accused Viral Sawla indicate that screen shot of the calculation refers to word R.D. indicating the involvement of the applicant. Viral Sawla had explained the words R.D. as Rajendra Dave. The memorandum statements of the said accused were recorded under Section 27 of Evidence Act, wherein, he has explained the term R.D. and the notes forwarded on the WhatsApp. Confessional statement of 15 accused were recorded under Section 18 of MCOC Act. In the confessional statement of Jayesh Sawla, it is stated that the applicant is assisting Sawla family in their illegal business and distributing protection money to the gangsters. The confessional statements also indicate that the applicant accused had acted as a broker in purchasing properties. The confessional statement of Jayesh Sawla makes reference to the involvement of the applicant. Learned APP also drew my attention to the statements of various other persons recorded under Section 164 of Cr.P.C. and contended that there is voluminous evidence showing connection of the applicant with the co-accused. It is submitted that further investigation was being conducted by following the procedure of law. Prosecution has filed affidavit–in–reply opposing the application for bail.

9 I have perused the documents. Prima facie, there is sufficient evidence to show the complicity of the applicant in the offences. The statements of witnesses recorded during investigation and the confessional statement of the accused, cannot be discarded at this stage. The material on record shows association of the applicant with the crime syndicate. During his personal search, mobile handset of the applicant was seized. During the course of investigation, mobile phone of accused no.38 Viral Prakash Sawla was seized and in his WhatsApp it is found that there were business calculations of Viral Prakash Sawla referred to had saved the name as R.D. After making further inquiry with Viral Prakash Sawla, it is revealed that R.D. is the name of the applicant. The screen shots of some chit from the cell phone contain the word R.D. and coded business account which was seized under Section 27 of the Evidence Act. The case of the

prosecution is that there is confession of the applicant recorded under Section 18 of the MCOC Act wherein he has specifically stated the manner in which he is associated with the accused Prakash Sawla and Jayesh Sawla. He is aware about the illegal betting business of absconding accused Prakash Sawla, Jayesh Sawla and Viral Sawla. He has helped Prakash Sawla in purchasing huge property in Mumbai and the said properties has been purchased out of the amount received from illegal betting business. During the course of investigation, confessional statement of 15 accused were recorded under Section 18 of the MCOC Act. Statement of accused no.40 reveals that the applicant is helping Sawla family in carrying out illegal betting business and purchasing properties out of it and he is involved in distributing protection money to Gangsters on behalf of Sawla family. Statements of Kumar Keni, Deep Gangar, Ashok Pawar, Sanjay Desai, Kishor Gangar, Sanjay Chhabria and Himanshu Shah were recorded wherein they have stated that the present applicant used to meet Prakash Sawla and he was being handed over the money to distribute the same amongst gangsters. The investigation indicate that the statement of some of witnesses were recorded under Section 164 of Cr.P.C. Their statements supports the prosecution case. Confession of Co-accused Jayesh

Shah, Viral Sawla, Jitendra Gosalia, Manish Agarwal and Shailesh Maniyar and the applicant reveals the details about the illegal betting business conducted by the accused. The material collected by the prosecution shows the link of the gang leader with the accused through the other co-accused. The charge–sheet is has sufficient material to show that the present accused is an active member of the organised crime syndicate headed by accused no.26, who has been indulging in continuing unlawful activities. The role of the applicant in providing protection money to gangsters and in purchasing various properties through profit obtained from organised crime syndicate was revealed after the approval order was passed, and, hence, his name was not included was reflected in the approval order, which was found in the sanction order under Section 23(2) of the MCOC Act. The decision relied upon by the learned counsel for the applicant were delivered in the facts of theoe cases and the same cannot be applying to the present case. The Division Bench in the decision dated 21st April, 2020, which is under challenge before the Apex Court had observed in paragraph 14 that though the gambling by itself may not be an organised crime, however, an organize crime syndicate may take recourse to it as one of its profit making ventures. It may on some profit or benefit out of it to support the other accused. It may indulging in contract killing, abduction, dacoity or other similar offences along with gambling business. If the existence of the crime syndicate comes to the knowledge of the State, for the first time while conducing the raid on gambling establishment and the investigation shows previous two more charge–sheets for cognizable offences punishable with punishment of three or four years, the police may take recourse to the MCOC Act and complete the investigation.

10 *Prima facie* there is material to show the complicity of the applicant. There is sufficient evidence indicating the involvement of the applicant in the offence under the provisions of MCOC Act. In the light of restrictions embodied under Section 21(4) of MCOC Act, no case for grant of bail is made out and the application deserves to be rejected.

:: O R D E R ::

(i) Bail Application No.3582 of 2019, is rejected and disposed of accordingly.

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