

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3611 OF 2019

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Momin Amin Khan

.. Applicant

Versus

The State of Maharashtra

.. Respondents

...

Mr.Harekrishna Mishra i/b Rantaneshwar Jha for the applicant.

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

API Mr.Bharat Gade present.

CORAM: BHARATI DANGRE, J.

DATED : 23rd MARCH, 2021

P.C:-

1 Being charge-sheeted for the offence punishable under the Maharashtra Control of Organized Crime Act (for short 'MCOC Act') in the backdrop of C.R.No. I-136 of 2007 registered under Sections 454, 457, 380, 401, 411, 414, 465, 468 471, 473, 120-B, 308 read with Section 34 of the IPC registered with Sanpada Police Station, Navi Mumbai, applicant seek his release on bail. In the said C.R, the applicant was arrested on 18th November 2017 and it is on 2nd January 2018, the provisions of MCOC Act were invoked and applied against all the accused persons. Charge-sheet filed in Special Court, Thane indict 13

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accused persons, the applicant being charge-sheeted as accused no.2.

2 The Branch Manager of Bank of Baroda, Ms.Seema Kumari on 13th November 2017 lodged a complaint at Sanpada Police Station informing that after the bank was closed on 10th November 2017 at about 7.30 p.m, being Friday, when the staff opened the Bank on 13th November 2017 at 9.30 am, being Monday, it was noted that the main locker was broken and atleast 48 lockers in the main strong room were found to be broken. An underground tunnel gaining access to the said strong room was revealed. The underground tunnel connected the rationing shop to the strong room of the bank and the gold ornaments lying in different lockers deposited by bank holders, worth Rs.38,40,000/- were reported to be stolen.

On the complaint being filed against unknown persons, the investigation commenced. Since the applicant was found in an Ertiga car in Sanpada area along with three other accused persons, on 18th November 2017, he came to be arrested along with them. Till the time the charge-sheet was filed, substantial stolen properties including gold ornaments were recovered from the accused persons, who came to be arrested from different parts of the country being Uttar Pradesh, West Bengal, Malegaon and Mumbai.

3 The applicant has averred that he is a petty labourer working in Mumbai and though incriminating documents and huge cash was found from the possession of accused nos.1, 2 and 3, nothing was recovered from the present applicant and even when his house at Goregaon was searched by the police, no incriminating material or any goods forming part of the stolen booty was found. During the course of investigation, four cars were also recovered from the accused persons.

It is the submission of the applicant that the accused persons have got their confessional statements recorded, which has divulged the role of each of the accused but none of the confessional statement is indicative of his active participation in the alleged crime. Since in absence of any eye witness or any CCTV footage, capturing the act of robbery, merely on the suspicion that the applicant was travelling in a car with some persons, is no ground to inculcate him. The learned counsel fairly submit that there are two C.Rs registered against the applicant invoking Section 379 of IPC, amongst which, in one case he is already acquitted.

4 The applicant submit that four of the accused persons who have been alleged to have played a key role in the crime and from whom there is recovery of the gold ornaments/cash have been released on bail by this Court and the said persons are Jumman Ali Abdul Samad Shaikh (Accused no.10), Sahanajabi

Mohiddin Shaikh (accused no.7), Rajendra Jagannath Wagh (accused no.6) and Maherunisha Shadam Sayyad @ Soniya (accused no.11). The submission is that the main culprits in the crime from whom substantial stolen property was recovered, are released on bail but the applicant is denied bail by the Special Court on flimsy grounds though he is innocent and has no connection with the crime.

5 A counter affidavit is placed on record by the State through the Assistant Commissioner of Police, Turbhe Division, Navi Mumbai. The learned APP, by relying on the said affidavit, submit that after the robbery was committed in the bank, confidential information was received that suspected accused persons were coming towards Vashi toll Naka from Mumbai in one Ertiga car, whose number was also intimated. A trap was laid and four accused persons, including the applicant came to be arrested. The version of the learned APP is that they confessed of committing the crime and during further investigation, other accused came to be arrested.

On being specifically asked whether there was any recovery from the present applicant, the learned APP state that there was recovery of an election card and driving licence of Anjan Mahanty (accused no.3) from him along with cash of Rs.5,000/- and mobile phone. She state that Anjan Mahanti is an accused, with track record and since his driving licence was

found in possession of the present applicant, this itself is an incriminating circumstance. The learned APP rely on the statement of co-accused Shubham Nishad recorded under Section 18 of MCOCA and according to the learned APP, it is this co-accused who has indicated the role of the applicant in the crime. Referring to the provisions of MCOCA and the requirements to attract the provisions therein, the learned APP submit that more than more than one charge-sheet in offence punishable with Imprisonment of three years or more have been filed against the gang leader Hajid Ali Sabdar Ali Mirja Beg (Accused no.4) who is the kingpin and mastermind of the conspiracy to rob the bank. She also refer to two offences, against the present applicant with the following description

Sr.No	Police Station	C.R.NO.	Sections
1	Bangur Nagar Police Station, Mumbai	265/2015	Sections 379, 34 of IPC
2	Goregaon Police Station, Mumbai	373/2015	Sections 379 of IPC.

6 With the assistance of the learned counsel for the applicant and the learned APP, I have scrutinized the charge-sheet which charged the applicant of the offence under the Indian Penal Code as well as MCOC.

My attention is invited to the several recovery panchnama recorded under Section 27 of the Evidence Act

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leading to discovery of the stolen property including the gold ornaments. In the said Memorandum of the co-accused, name of the applicant is taken along with the other accused persons as a participants in crime. The said statement, however, cannot be accepted as a conclusive proof of implication of the present applicant as the position of law as regards Section 27 of the Evidence Act, 1872, being clear, that when any fact is deposed to as discovered, in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not as it relates distinctly to the fact thereby discovered, may be proved. Another reason being that the name of the applicant has been mentioned in the memorandum in a vague and general manner without assigning him in any particular role in the act of digging up of the tunnel or in any way assisting the accused persons in the robbery by attributing any positive role.

7 The case of the prosecution as contained in the charge-sheet is that the tunnel was connected to Gala No.7, Balaji General Stores which is located at the western side of the bank. The owner of the said gala had stated that he had given it on rent to one Gena Bachan Prasad, but no such person was traced. The present applicant has no connection with the shop either by renting it or running the said shop. Prima facie, the said statement therefore, cannot be admitted in evidence and in any

case, it do not form any concrete material, indicting the present applicant.

8 The confessional statement of the co-accused which have been heavily relied upon by the learned APP are also included in the charge-sheet. The confessional statement of Kamlesh do not contain any averment about the involvement of the applicant and in fact, it is the accused no.13 Deepak Mishra, accused no.1 – Shravan who are described as persons seen in the shop and named by the co-accused. As far as the statement of Shubham recorded under Section 18 in form of a confessional statement is concerned, when the statement is carefully perused, it reveal that on being arrested on 25th November 2017 and when he was brought to Mumbai for interrogation, he was confronted with some photographs alleged to be of the persons who had committed robbery in the bank. After looking at the photographs, co-accused Shubham (Accused no.9) identified one Ajju Sheth, Shravan and he had stated that once he had seen two persons chatting with Deepak Mishra (Accused no.13). He identified the said persons and from the police, the names were revealed to him, being Momin i.e. the applicant and Anjal Mohanti.

Prima facie, the said statement is as vague as possible as it do not give any further description as to the time when the applicant was seen with the co-accused and as to whether any role

is assigned to him in the act of robbery. It is too far-fetched to assume that a person merely being seen talking with the co-accused is also arraigned as an accused. The material contained in the charge-sheet, therefore, do not prima facie support the case of the prosecution in levelling the accusations as he being a member of the crime syndicate and being involved in the crime in such a capacity with the gang leader Hajid Ali Saddar.

9 Reliance is placed on the order releasing the co-accused on bail, has led me the said orders. Juman Ali – accused no.10 who has been named in the memorandum leading to discovery of the co-accused along with the present applicant is released on bail by order dated 8th January 2019 (Criminal Bail Application No.1858/2018). While releasing him on bail, Justice Prakash Naik has observed as under :-

“6. The applicant is in custody from 3rd December 2017. In the confessional statement, said accused had stated that his share of ornaments and the equipments were kept in the house of the applicant who is his friend. It is alleged that the applicant had provided the false number plate of the vehicle. The statement do not indicate that the applicant was involved, conspired in any manner in commission of crime. He was not participant in constructing tunnel or committing robbery. From the memorandum statement of the co-accused Mohiddin leading to recovery from the residence of the applicant, it appears that the applicant

was allegedly present in the house at the time of recovery. The applicant has then handed over the plastic bag containing the ornaments. At that stage, the prosecution case does not proceed beyond the fact that the articles were kept in the house of the applicant by co-accused Mohiddin being his friend. There are no criminal antecedents against the applicant. In the circumstances, even taking into consideration the restriction under Section 21(4) of MCOC Ac, the applicant can be granted bail in the light of nature of evidence against him”

10 The applicant is on a better pedestal than the said accused Jumman, as there is no recovery against the present applicant. Further, while releasing the accused no.7 on bail, though the amount was recovered from house, since it was alleged to have been handed over to her by her husband and there was no material to demonstrate to implicate her as a Member of the Organized Crime Syndicate, she was released on bail. In another two applications, the accused Mehrunissa and accused Rajendra Wagh were released on bail in Criminal Bail Application No.77 of 2019 and 749 of 2019 on the ground that there is recovery of gold under Section 27 of the Evidence Act given by the co-accused but it is doubtful whether the applicant would be guilty of the offence under MCOC Act. In absence of any antecedents, the two applicants were released on bail.

11 Contrasting the case of the applicant against the other co-accused who have been released on bail, there is no recovery from the present applicant and there is no material in form of positive evidence to implicate him or connect him to the present crime and specifically when he is being charged with a serious offence. He has been arrested on 18th November 2017 and since then, is behind bar. His indictment in an offence of theft in the two C.Rs out of which he has already been acquitted in one of the C.R which is of the year 2015 and other C.R. being of the same year, pending for trial, shall not keep him away from his release on bail and his liberty. He is therefore, directed to be enlarged on bail in C.R.No.I-136 of 2018 subject to the following order.

Needless to state that the observations made in the order are prima facie in nature and limited for the purpose of consideration of the present application. The Special Court shall not be influenced by the above observations while determining guilt of the accused in the said C.R.

ORDER

- (a) The Applicant – Mr. Momin Amin Khan shall be released on bail in connection with C.R. No. I-136 of 2018 on executing P.R. bond to the extent of Rs.20,000/- and furnishing 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 attend Sanpada Police Station, Navi Mumbai once in every month on 1st Monday between 11.00 am to 1.00 p.m.
- (e) The applicant shall attend the Special Court on the date of hearing unless exempted.
- (f) The applicant shall intimate the Investigating Officer his contact number as well as his permanent address of residence and will update him of any change therein.
- (g) The applicant shall not cross the boundary of city of Mumbai and territorial limits of Thane district without permission of Special Court.

12 Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J