

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 244 OF 2020**

Devram Gulab Ghogare	... Applicant
Vs.	
State of Maharashtra	.. Respondent

Mr. Aniket Ujjawal Nikam a/w Mr. Piyush Toshnival, Mr. Amit Icham, Mr. Aashish Satpute i/b Mr. Vivek Arote, for Applicant.
Smt. Veera Shinde, APP for State - Respondent.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 26, 2022

P.C. :

1. Heard learned Counsel for the applicant and learned APP for the respondent.
2. This is an application for bail in respect of C.R. No. 349 of 2017 registered with Umbraj Police Station, Satara. The FIR is registered on 22/11/2017 lodged by the complainant for the offences punishable under sections 396, 458, 120(b), 109 of the Indian Penal Code and sections 3(1)(i)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act').

3. It is alleged that in the intervening night between 21/11/2017 and 22/11/2017, 5 accused committed robbery. The applicant is shown as original accused no.4. It is alleged that while the informant was sleeping, his uncle Riyaz called from his mobile to inform him that he heard some sound near the door and suspected some thieves to be around. The informant went to check on the ground floor, when he found that the kitchen door was open. It is the case of the informant that he found his grandmother lying on the bed. Her bangles were broken and door of the showcase was open. The gold ornaments worn by her were missing from her person. The informant's grandmother was taken to the hospital where she was declared to be dead. It is the case of the informant that the gold ornaments to the tune of Rs. 4,93,500/- were stolen by the accused persons. The main accused, namely Rukul Dashrath Chavan is still absconding. The other accused along with the applicant came to be arrested on 27/11/2017.

4. It is the prosecution's case that the applicant is actively involved in the crime and was in contact with the

co-accused before, during and after the commission of the offence. Learned APP relied upon the Call Details Record ('C.D.R.' for short) for the period between 01/10/2017 and 25/11/2017 to support the prosecution version that having regard to the large number of phone calls made, it definitely points to the applicant's complicity along with the other accused in the commission of said offence. The materials against the applicants are disclosed in the affidavit filed by one Ranjit Jagannath Patil, Sub-Divisional Officer, Karad Division, Satara. The allegation against the applicant is that it is the applicant who dropped the co-accused on the highway, near the scene of the offence and thereafter picked them up. The prosecution relied upon the statement of the witness namely, Kiran Narayan Shetty, who stated that on 21/11/2017 at about 11.30 p.m. in the night, the applicant along with his wife and child booked a room and stayed in the room upto 3.15 a.m. The applicant left the hotel room on 22/11/2017 at around 3.15 a.m. along with his wife and child. The applicant has been identified by witness Kiran Narayan Shetty during the Test Identification

Parade conducted before the competent authority. Learned APP submitted that the main accused (Accused No.1) namely Rukul Dashrath Chavan has formed an organised crime syndicate with the other co-accused and during the preceding years, they singly and/or jointly for and on behalf of such organised crime syndicate, committed various offences i.e. attempt to commit murder, house breaking, dacoity, robbery by using criminal force etc. registered with various police stations. The following cases are shown to be registered against Rukul (accused No. 1)

Sr. No.	Police Station	C.R.Nos./Sections	Status
1	Nagar Taluka	175/2011 u/s 395 of IPC	Acquitted
2	Nagar Taluka	198/11 u/s 395 of IPC	Acquitted
3	Pathardi	551/2011 u/s 395 of IPC	Court pending
4	Tofkhana	483/2011	Court pending
5	MIDC, Nagar	191/2011 u/s 395 of IPC	Acquitted
6	MIDC, Nagar	193/2011 u/s 395 of IPC	Acquitted
7	MIDC, Nagar	195/2011 u/s 395, 380 of IPC	Acquitted
8	MIDC Nagar	200/2011, u/s 399, 402, of IPC r/w 3/25, 4/25 of Arms Act	Acquitted
9	Umbraj	351/2017, u/s 454, 457, 380 of IPC	Court pending

5. It is pointed out by learned Counsel for the applicant that Rukul, the gang leader has also been acquitted in

respect of C.R. No. 551 of 2011 (item 3) registered with Pathardi Police Station under section 395 IPC. As of now, there are only two cases pending against Rukul i.e. C.R. No. 483/2011 registered with Tofkhana Police Station and the present case with C.R. No. 349/2017 (inadvertently mentioned as C.R. No. 351/2017 at item 9 of the chart).

6. So far as the applicant is concerned, the following cases are registered against him.

Sr. No	Police Station	C.R. Nos./ Sections	Status
1	Umbraj	351/2017 u/s 454, 457, 380 of IPC	Court pending.
2.	Umbraj	349/2017 u/s 396, 458, 120-B, 109 of IPC and sections 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act (present offence)	Court pending.

7. Learned Counsel for the applicant relied upon the statement of the applicant's wife which was recorded on 25/04/2018. According to him, no reliance should be placed on such statement as the same was recorded almost after 5 months. There is delay in recording the statement. He further submitted that the applicant was not actively involved in the commission of offence. The other accused were known to the applicant and role that is attributed to

the applicant is that of dropping the accused on the highway and again picking them up in the early hours of 22/11/2017. The applicant was in the travel business driving his own car.

8. Heard. The materials mainly relied upon against the applicant are CDR details indicating that there have been exchange of more than 50 calls between the applicant and the other co-accused on 21/11/2017 and 22/11/2017, prior thereto also there have been several calls exchanged. The allegation against the applicant is that he dropped the accused on the highway which was near the scene of the offence and after commission of the offence, picked them up and proceeded to drop them at their desired destination. It is the prosecution case that the wife and son of the applicant accompanied him and they stayed at a lodge. This is the role attributed by the prosecution, but there is nothing to indicate the applicant's direct involvement in the offence. The prosecution relied upon the large number of CDR calls made to demonstrate his complicity. There is no recovery at the instance of the applicant. In my opinion,

prima facie, these materials are not sufficient to connect the applicant with commission of offence.

9. Furthermore, so far as bar under section 21 of MCOC Act is concerned, learned Counsel for the applicant relied upon the decision of the Apex Court in the case of **Prasad Shrikant Purohit Vs. State of Maharashtra and another (2015) 7 Supreme Court Cases 440** paragraph 95 being relevant reads thus :

"In the light of our above conclusions on the various submissions, we are convinced that in respect of the appellant in Criminal Appeal No.1971/2010, namely, A-7, there is no scope even for the limited purpose of [Section 21\(4\)\(b\)](#) to hold that application of MCOCA is doubtful. We have held that the said appellant A-7 had every nexus with all the three crimes, namely, Parbhani, Jalna and Malegaon and, therefore, the bar for grant of bail under [Section 21](#) would clearly operate against him and there is no scope for granting any bail. Insofar as the rest of the appellants are concerned, for the purpose of invoking [Section 21\(4\)\(b\)](#), namely, to consider their claim for bail, it can be held that for the present juncture with the available materials on record, it is not possible to show any nexus of the appellants who have been proceeded against for their involvement in Malegaon blast with the two earlier cases, namely, Parbhani and Jalna. There is considerable doubt about their involvement in Parbhani and Jalna and, therefore, they are entitled for their bail applications to be considered on merits.

10. So far as the applicant is concerned, prior to the registering of C.R. No. 349/2017, there is no other offence registered against him where he is shown as an accused

along with the other accused. Even in respect of C.R.No. 351/2017, which is registered post C.R.No.349/2017, the applicant has been acquitted. Learned Counsel for the applicant placed on record the order dated 20/08/2019 passed by the trial Court acquitting the applicant for the offence registered against him in C.R.No.351/2017. It is alleged that the applicant along with the other accused had committed offence at two different places in the intervening night of 21/11/2017 and 22/11/2017, the outcome of which were these two C.Rs. There is a doubt about the involvement of the applicant in respect of C.R.No. 349/2017. Prima facie, I am satisfied that the bar under section 21 of the MCOC Act is not attracted. Needless to mention, the observations made are limited to grant of bail and shall not influence the trial. I am also inclined to grant bail to the applicant in view of circumstance that the trial in C.R. No. 349/2017 is even yet to commence and it has been more than 4 years and 3 months since the applicant is in custody. For all these reasons, though learned APP resisted the applicant for grant of bail, I am inclined to grant bail to

the applicant. Hence, the following order.

ORDER

- (i) The application is allowed.

- (ii) The applicant be released on bail in respect of C.R. No. 349/2017 registered with Umbraj Police Station on furnishing PR bond of Rs. 25,000/- with one or more sureties of the like amount to the satisfaction of the trial Court.

- (iii) The applicant shall not threaten the witnesses or tamper the prosecution evidence.

- (iv) The applicant shall report to the Umbraj Police Station every Monday between 11.00 a.m. and 1.00 p.m.

- (v) In the event the applicant commits similar or any other offence, the prosecution will be at liberty to move the trial Court for cancellation of this bail.

11. Application is disposed of.

(M. S. KARNIK, J.)