Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 759 OF 2021

Avinash Sadashiv Sathe ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Nitin Deshpande, for the Applicant.
Ms. P. N. Dabholkar, APP for the State.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 15th JULY, 2022
PRONOUNCED ON: 25th JULY, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.779 of 2017, registered with Satara City Police Station, Satara, for the offences punishable under Sections 395, 341, 364, 504 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 39 and 45 of the Maharashtra Money-lending (Regulation) Act, 2014 and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 ("the MCOC Act"), has preferred this application to enlarge him on bail.

2. The prosecution case runs as under:

On 3rd March, 2016, Vikas Mane (the first informant) had availed a loan of Rs.33,50,000/- from Pradip Dattatraya Jadhav

(A2), who deals in the business of illegal money-lending. Despite repayment of the entire principal amount and the interest agreed thereon, Pradip (A2) continued to demand more amount from the first informant. Thus, the latter had lodged a report at Satara City Police Station on 5th February, 2016. Yet Pradip (A2) and his unknown three associates had come to the house of the first informant, committed intimidation by threatening his wife and children out of their lives and abused them. Again a report was lodged at Satara City Police Station. In the month of December, 2016, Pradip (A2) and his four associates intercepted the car of the first informant. They took him to a snacks centre. They exerted pressure on the first informant to then and there pay Rs.1,00,000/-. The first informant paid a sum of Rs.50,000/-. Still Pradip (A2) continued to intimidate the first informant with dire consequences.

(b) In the month of April, 2017, Pradip (A2) again accosted the first informant and his friend Firoz near Vishal Wine Shop, Satara. Pradip (A2) was accompanied by his brother Sandeep Jadhav (A3), Akash alias Bala Khude (A1), Mayur Gavali (A4) and Rohit Londhe (A5). They forcibly took the first informant in front of the Church. They called their associates.

Seven to eight other associates of Pradip (A2) came thereat in an Innova car. Four to Five more persons alighted from a Swift Dezire car. They all started abusing and assaulting the first informant. They threatened the first informant to pay the balance amount of Pradip (A2) lest he would be cut to pieces. They robbed him of a cash amount of Rs.14,000/-, and made him to deliver a cheque for Rs.5,00,000/- drawn on Canara Bank. The first informant did not report the matter to police immediately as Pradip (A2) and his associates were notorious gangsters and habitually indulged in criminal activities. When the first informant learnt about the action initiated by the police against the persons dealing in illegal money-lending, the first informant approached the police and lodged the report on 24th September, 2017.

3. Investigation commenced. It transpired that Pradip (A2) and his associates were indulging in continuing unlawful activities. Akash alias Balu Khude (A1) was the gang leader. They formed an organized crime syndicate and committed organized crimes. With the prior approval under Section 23(1)(a) of the MCOC Act, offences punishable under MCOC Act came to be added. Eventually, the applicant came to be arrested on 28th September, 2017. Post completion of investigation, with the previous sanction of the competent authority, the Special Court took cognizance of the offences punishable under MCOC Act along with the offences punishable under the Penal Code and the Money-Lending Act, 2014.

4. In the intervening period, co-accused Mayur Gavali (A4) and Sandip Jadhav (A3) were released on bail by this court by an order dated 4th February, 2020. Thus, the applicant preferred an application for bail before the learned Special Judge. However, by an order dated 29th December, 2020, the learned Special Judge was persuaded to reject the application opining, *inter alia,* that three crimes were registered against the applicant at Satara City Police Station and Shahupuri Police Station, for the offence punishable under Section 379 read with Section 34 of the Penal Code and there was thus adequate material to justify invocation of the offences punishable under MCOC Act.

5. The applicant has preferred this application asserting *inter alia* that while releasing co-accused on bail this Court has doubted the applicability of the provisions contained in MCOC Act. There is no material to show that the applicant is involved in continuing unlawful activity. Nor there is material to show that the applicant was one of the persons, who allegedly abused, assaulted and robbed the first informant in the month of April, 2017, except the statement of one Harshal Mane. In any event, the applicant is entitled to claim parity as there is no significant distinction in the role attributed to the applicant and the co-accused, who are released on bail.

6. An affidavit-in-reply is filed by the respondent. It is contended that the invocation of the provisions contained in MCOC Act is wholly justifiable. The statements of Harshal Mane recorded before the Police and before the learned Magistrate under Section 164 of the Code squarely incriminate the applicant. The applicant has also been identified in the Test Identification Parade by a witness Philip Bhanbal. In addition, the applicant has made a confession under Section 18 of the MCOC Act. Therefore, it cannot be said that there is no material to either invoke the provisions contained in MCOC Act or to connect the applicant with the subject offence.

7. I have heard Mr. Deshpande, the learned Counsel for the applicant and Ms. Dabholkar, the learned APP for the State, at some length. With the assistance of the learned Counsel I have perused report under Section 173 of the Code and the documents annexed with it as well as the material placed on record.

8. At the outset, Mr. Deshpande banked upon the observations of this Court in the order dated 4th February, 2020 in Bail Application No.702/2019 and Bail Application No.1388/2019, whereby the co-accused Mayur Gavali and Sandip Jadhav were released on bail. Special emphasis was laid on the observations in paragraph 8 of the said order, wherein this Court has *prima facie* recorded a view that the embargo contained in Section 21(4) of the MCOC Act may not operate.

9. Mr. Deshpande would further urge that there is next to no evidence regarding the involvement of the applicant in the alleged incident of assault and dacoity, in the month of April, 2017. The claim of Harshal Mane of having seen the applicant as one of the assailants is fraught with infirmities. Even the alleged confession made by the applicant and recorded under Section 18 of the MCOC Act is of no avail to the prosecution as it cannot be said to be a confession, in the strict sense of the term. As the applicant is in custody since September, 2017, even otherwise the applicant deserves to be enlarged on bail, submitted Mr. Deshpande.

10. In opposition to this, Ms. Dabholkar would urge that there is overwhelming material to show that the applicant is a member of organized crime syndicate and Akash Khude (A1) is its gang leader. Support was sought to be drawn from the registration of three crimes against the applicant with Satara City Police Station and Shahupuri Police Station in the year 2014 for the offence punishable under Section 379 read with Section 34 of the Penal Code. Co-relating those offences with the offences registered against the gang leader, Ms. Dabholkar would urge that the provisions of MCOC Act are squarely attracted. It was submitted that in addition to the statements of the witnesses, who have named the applicant as one of the assailants, there is circumstantial evidence in the nature of call detail record which shows that applicant had been in constant touch with co-accused Pradip Jadhav, Akash Khude and Mayur Gavali. Thus, the applicant does not deserve to be released on bail, submitted Ms. Dabholkar.

11. To start with, it may be apposite to extract the observations of this Court in the case of co-accused Mayur Gavali and Sandeep Jadhav (BA/702/2019 and BA/1388/2019) as the accusation against the applicant rests on same substratum. Paragraphs 6 to 8 read as under:

> "**6**. Having heard both the sides. I have perused the charge-sheet. The complaint proceeds with the fact that the complainant had obtained loan amount from Pradip Jadhav on 3rd March, 2016 in the sum of Rs. 3,50,000/- with interest @ 15%. The entire case relates to the money lending. It is alleged that from time to time the complainant was

threatened for returning the money towards the interest. The first incident had allegedly occurred on 26th November, 2016 and the last incident is of April, 2017. The FIR was lodged on 24th September 2017 i.e. after a period about 5 months from the last incident. The complainant has stated that the delay in registration of FIR was on account of fear of accused Pradip Jadhav. However, it is apparent that, according to the complainant he had lodged the complaints earlier against Pradip Jadhav. Explanation for delay appears to be after thought. The loan amount was obtained from Pardip Jadhav. The applicant Sandip Jadhav is brother of Pradip Jadhav. The previous cases are against them relating to the money lending. According to the prosecution, the gang leader is Aakash @ Balu Tanaji Khude, however on perusal of the FIR and the other documents it appears that lead role was not played by him. Applicant Sandip Jadhav is not involved in any other case with Balu Khude. Applicant Sanjay Jadhav arrested on 15th November, 2017 and applicant Mayur Gawali was arrested on 7th February, 2018.

7. Learned counsel for the applicant Mayur Gawali pointed outthat one case was registered against Mayur Gawali with Aakash @ Balu Tanaji Khude, however the said case has resulted in acquittal. The said applicant was acquitted in all the cases registered against him. Except the case arising out of C.R. No. 84 of 2011 for offence punishable under Section 160 of Indian Penal Code. According to him no other cases are pending against him.

8. On perusal of the charge-sheet which is apparent that the entire case is relates to money lending transaction with the complainant. The applicant Sandip Jadhav had allegedly threatened the complainant on 27th November, 2016. He has not been attributed any other role. Thereafter, his presence was reflected in the incident of April, 2017. I have perused the confessional statement of Avinash Sathe. He has exonerated himself and the statement is exculpatory in nature. He attributes role to the applicants. On perusal of the contents of the said statement it would not satisfy the requirement of organized crime. The Sessions Court while rejecting the application for bail had observed that the application of MCOC is doubtful, however, on merits, the application for bail was rejected. As against Sandip Jadhav is not connected with any other case with Balu Khude. The reply filed by the prosecution refers to the registration of six cases. One case is resulted in acquittal. One case was closed as final and the other cases are pending. The offences in pending cases are under Sections 399, 402, 323 and under the Provisions of Money Lending Act. Considering the nature of material on record, the embargo under Section 21(4) of the MCOC Act would not be impediment for grant of bail. They are in custody from the date arrest, case for grant of bail is made out."

12. The aforesaid observations govern the case of the applicant with equal force. Nonetheless, I am inclined to independently evaluate the material against the applicant through the prism of entitlement for bail as the learned APP sought to bank upon the statement of Harshal Mane and the identification of the applicant by witnesses Harshal Mane and Philip Bhanbal and the statement made by the applicant under Section 18 of the MCOC Act to bolster up the submission that the role of the applicant stands on a different pedestal.

13. To begin with, in none of the incidents, which were adverted to by the first informant, the applicant was named by the first informant. Nor the features of the assailants were described. It is in the statement of Harshal Mane, the applicant comes in the frame.

14. Harshal Mane states that in the month of April, 2017, in front of Church he had witnessed a commotion. Co-accused Sandip Jadhav (A3) and Akash Khude (A1) were accompanied by 10 to 12 associates. Applicant Avinash Sathe and co-accused Samadhan Ovhal (A6), Mayur Gavali (A4) and Rohit Londe (A5) were amongst them. They were abusing and assaulting the first informant by fist and kick blows. Harshal Mane and his friend Anil Kasture tried to rescue the first informant.

Thereupon co-accused Pradip (A2) threatened them also with dire consequences. Hence, they did not intervene. In his statement under Section 164 of the Code, Harshal Mane has reiterated the aforesaid version.

15. In the test identification parade Harshal Mane and Philip Bhanbal did identify the applicant. This is the material pressed into service against the applicant.

16. The vice of delay which afflicts the lodging of the report by the first informant also erodes the claim of Harshal mane. The applicant came to be arrested on 28th September, 2017. The statement of Harshal Mane came to be recorded on 19th November, 2017. Mr. Harshal Mane attributes to the applicant an omnibus role of abusing and assaulting the first informant, as one of the 10 to 12 associates of the co-accused Pradip Jadhav (A2). It is imperative to note that Harshal Mane also named Mayur Gavali (A4) as one of the assailants. Mayur Gavali (A4) has been released on bail.

17. The identification of the applicant by Harshal Mane and Philip Bhanbal in the TI Parade, *prima facie,* does not constitute a strong incriminating circumstance. At best, in the context of omnibus allegations, the presence of the applicant as a member of the unlawful assembly can said to have been made out.

18. The reliance sought to be placed by the learned APP on the statement of the applicant recorded under Section 18 of the MCOC Act does not seem to advance the cause of the prosecution. I have carefully perused the statement of the applicant. The entire statement appears to be exculpatory in nature. The applicant admits neither the commission of the offences nor the facts which constitute the offence. *Prima facie,* the statement does not fulfill the requirements of a confession, qua the applicant.

19. The last thread to which the learned APP endeavoured to cling to was the call detail record. It seems that the applicant was in touch with the co-accused. That by itself, without substantive incriminating material, does not furnish a sustainable ground to detain the applicant as an undertrial prisoner.

20. On the aspect of Section 21(4) of the MCOC Act, this Court has recorded that, *prima facie,* the interdict does not come into play.

21. I have perused the material on record which throws light on the antecedents of the applicant. Apart from the subject crime, three crimes for the offence punishable under Section 379 of the Penal Code are arrayed against the applicant. *Prima* *facie,* there is no material to indicate that the aforesaid offences were committed as a member of the organized crime syndicate. In the context of the accusation in the crimes registered against the applicant and the absence of nexus with the offences, which have been registered against the Akash Khude (A1), the alleged gang leader, the invocation of MCOC Act, at least, qua the applicant, appears to be not free from infirmities.

22. The Court also can not loose sight of the facts that, in the instant case, the principal accusation is against Pradip Jadhav (A2) and the genesis of the alleged offences is the alleged money-lending transactions between Pradip (A2) and the first informant.

23. For the forgoing reasons, I am unable to persuade myself to agree with the submission on behalf of the prosecution that the applicant is not entitled to claim parity. Even otherwise, on an independent analysis, I am impelled to hold that the interdict contained in Section 21(4) of the MCOC Act, may not apply qua the applicant.

24. The applicant is in custody for almost five years. There is no realistic prospect of the conclusion of the trial within a reasonable period. Further detention of the applicant would be in teeth of the right to speedy trial and would severely *jeopardise* the personal liberty of the applicant, especially in the backdrop of the fragile nature of the material pressed into service against the applicant.

25. I am, therefore, inclined to exercise the discretion in favour of the applicant.

26. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant – Avinash Sadashiv Sathe be released on bail, in CR No.779/2017, registered with Satara City Police Station, on furnishing a P. R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicant shall furnish his permanent residential address and contact details to the Police Inspector, Satara City Police Station, within a period one week of his release and intimate the change, if any

(v) The applicant shall mark his presence at Satara City Police Station, on the first Saturday of every month in between 11.00 am. to 1.00 pm. till conclusion of the trial.

(vi) The applicant shall not contact the first informant for any purpose whatsoever.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(viii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]