

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 486 OF 2021

Ashok Mohanraj Chhajed .. Applicant
Versus
The State of Maharashtra .. Respondent

...

Mr.Aabad Ponda, Sr. Advocate i/b Karma Vivan for the applicant.
Mr.Sudeep Pasbola with Advocate Tripti Shetty for the intervenor.
Mrs.A.A. Takalkar, APP for the State.
ACP Shri Sanjay Patil from West Control, Bandra.
PI Shri Kiran Aher from Crime Branch, Unit-9.

CORAM: BHARATI DANGRE, J.
DATED : 28th JULY, 2022

P.C:-

1 The applicant was arrested in C.R.No. 118/2020 registered with DCB, CID Unit IX, Mumbai, for the offences punishable u/s.302, 120B read with Section 34 of IPC, Section 37(1)(A) r/w Section 135 of the Maharashtra Police Act and Section 3(1)(i), 3(2) and 3(4) of MCOCA, seek his release on bail. He came to be arrested on 30/10/2020 by D.N. Nagar police station in Crime No.534/2020. His Bail Application came to be rejected by Special Judge on 15/1/2021, by a detail order by referring to the material compiled in the charge-sheet, and holding that the material point out that the applicant was the main conspirator in murdering the deceased Abdul Munaf Abdul Aziz Shaikh (hereinafter referred to as 'Munaf') and the material indicate his complacency in the conspiracy since he had agreed to provide finance to give effect to the conspiracy.

2 Heard learned senior counsel Mr. Aabad Ponda for the applicant. Advocate Sudeep Pasbola has sought intervention in the application, being the complainant. Ms.Takalkar, learned APP represent the State, DCB, CID Unit-IX.

3 On 1/11/2020, a report came to be lodged by the informant with D.N. Nagar police station, that deceased Munaf was his maternal uncle and in the year 2007, he started SRA project at Navbharat Co-operative Housing Society, and in the year 2008, he purchased land admeasuring 1200 sq.ft from one Abdul Latif, father of Accused no.9. Since accused no.1 Abdul Rehman @ Sonu Abdulla Latif had an objection, he started meeting with Saleem Baig, partner of Basera Project, with an intention that he shall be included in the said project. It is alleged that accused Naseem Khan and Peshkar Khan were not inclined to accept him into the said partnership firm, and in the month of October 2019, the accused no.1 and Naseem Khan and Peshkhar Khan awarded a contract to Ankit Punjabi to eliminate Munaf and a criminal conspiracy to commit his murder was hatched, but it was not accomplished.

The informant stated that on 17/8/2020 at 5.15 a.m, when his uncle had gone to Irla Masjid for offering prayer and while he was alighting from his car, some unknown person assaulted him by a sharp edged weapon, and when he attempted to seek shelter in the Masjid, the assailant gave blows on his back, chest and stomach. He fled from the spot and the injured was taken to Cooper Hospital, where he was declared dead. This resulted in registration of C.R.No. 258/2020. The complaint was registered against an unknown person vide C.R.No. 258/2020 invoking Section 302 of the IPC.

4 Accidental Death was registered vide ADR No.52/2020 u/s.174. The post mortem assessed the cause of death to be '*shock and hemorrhage due to multiple stab injuries (unnatural)*'.

On 18/8/2020, the accused no.1 came to be arrested and on 20/8/2020, the seizure was carried out in the house of accused no.2 Mohd. Nadeem Naushad Shaikh, and which led to the jacket having blood stains, and jeans pant and T-shirt.

The incident was captured in a CCTV footage and accused no.2 is seen wearing the same clothes. The witness handed over the CD which was taken into possession by executing a panchnama and the CD which record the event of October 2019, led to a conspiracy being hatched by accused nos.1 and accused no.6.

5 The charge-sheet, after referring to the material compiled, allege that Peshkar Khan and his sons Naseem and Wasim were apprehending that they would loose the project and therefore, with the assistance of the present applicant, who had interest in the said project hatched a conspiracy to eliminate Munaf Shaikh. The said conclusion is derived on the basis of various telephonic conversation.

6 The Assistant Commissioner of Police, who has filed an affidavit, state that during the course of investigation, it is revealed that accused no.2 Mohd. Nadeem Shaikh, on instructions of accused no.6, Naseem Peshkar Khan committed murder of Munaf. It is also stated that the investigation reveal that accused no.1 Sonu had made a phone call to Nadeem Shaikh and during investigation, it was revealed that there was a Deed of Partnership between the

applicant Vijay Sharma and Salim Baig which was executed on 15/7/2003, where the applicant shared 25% share, whereas Vijay and Saleem had 51% and 24% share respectively. The project was stayed by the High Court for some point of time, but, later the stay was vacated. Vijay who had a share of 51% did not possess sufficient funds and the deceased was introduced for making investment, and accordingly, a meeting was scheduled between Vijay and deceased Munaf which was not attended by the applicant. It is alleged that the Applicant had asked removal of Vijay from the said project and the applicant was opposed to the entry of Munaf in the said project. Despite his objection, Munaf was introduced as a Partner on 14/3/2019 and this was disliked by the present applicant, and that is attributed as a motive for the applicant to hatch criminal conspiracy with other co-accused for murdering Munaf.

7 The investigation led to an Organized Crime Syndicate being headed by accused no.6 Naseem Peshkar Khan and the applicant is attributed a role of the member of the said syndicate, which is involved in commission of series of offences including offences by use of violence, threat of violence or intimidation or coercion, by unlawful means with the object of gaining illegal pecuniary benefit for themselves.

8 The affidavit in reply attribute that the applicant is a Member of the Organized Crime Syndicate and hence, prior approval was accorded to prosecute him under the provisions of MCOCA and subsequent thereto, a charge-sheet came to be filed before the Special Court on 4/12/2020. Subsequently, a

supplementary charge-sheet came to be filed against Peshkar Khalil Khan and Naseem Peshkar Khan (Gang leader) on 29/1/2021 before the Special Court. It is the case of prosecution that though the applicant has no criminal antecedents, his role has surfaced as the one who has introduced a person having criminal background, in the project, with a view to pressurize the partners and local residents. Though the Applicant did not remain present for the meeting arranged, the prosecution rely upon the exchange of calls between the applicant and witness no.1 and another set of conversation between witness no.1 and the co-accused Naseem, and it is stated that from the said conversation, which reveal that the applicant made inquiry about the incident in question with witness no.1 and he also inquired whether there was presence of CCTV camera near the spot of the incident.

By referring to the aforesaid conversations, it is sought to be alleged that if at all he had no concern with the murder, there is no reason to make call to the witnesses and to gain information and this goes to show that he was aware of the conspiracy.

By referring to statements of several persons compiled in the charge-sheet, it is sought to be argued by the learned APP that the applicant has a serious role to play in the whole conspiracy. Two statements recorded u/s.164 Cr.P.C are also relied upon, apart from the conversation.

9 The learned senior counsel Mr.Ponda would vehemently submit that the applicant was not present in Mumbai when the murder took place and by referring to his CDR, which form part of the charge-sheet from pages 1505 to 1912, the learned senior

counsel would submit that from 12/3/2020 to 17/4/2020, he was in Rajasthan. On 17/4/2020, he came to Mumbai to pick up his family and left with them on 18/5/2020. He would submit that from 18/5/2020 to 17/8/2020, there is not a single call exchanged with any of the accused persons.

The learned counsel would submit that in the whole charge-sheet, he is only accused of a motive, without any material in form of any positive evidence being placed on record. The learned counsel would submit that the entire exercise undertaken by the prosecution to invoke the provisions of MCOC against him, itself is contrary to the facts involved in the prosecution case by alleging that Mr.Naseem Peshkar Khan is the head of the gang and the applicant is one of its member. He would further submit that there is no evidence compiled in the charge-sheet to demonstrate any continuing unlawful activity on part of the applicant either as a member of organized crime syndicate or otherwise, nor any link has been provided to demonstrate the membership of the applicant with the alleged organized crime syndicate or his involvement in any continuing unlawful activity.

As far as CDRs which form part of the charge-sheet, he would submit that there is no contact at all between the applicant and the other accused since April 2020, and the CDR produced are from 1/1/2020, which fail to demonstrate his connection to the said crime. The communication inter-se between the accused persons produced on record, however, do not involve the present applicant.

By inviting my attention to the sequence of events, the learned senior counsel would submit that the deceased was not a developer but he was a financier and the MOU which was executed was between the applicant and Peshkar and there was no intention

on part of the applicant to replace the deceased who was his financier. By inviting my attention to the MOU, he would submit that even after introduction of Munaf in the partnership, his share remained unchanged and therefore, there was no reason why he was displeased with the said arrangement.

Submitting that Section 3 of the MCOC Act contemplate *mens rea*, which is conspicuously lacking, the learned senior counsel would seek his release on bail.

Per contra, the learned counsel Mr.Pasbola for the complainant would lay emphasis upon the material establishing nexus of the applicant to Peshkar Khan and he would submit that there is sufficient material to indict him, as the circumstances indicate that Peshkar Khan was appointed as a Consultant by the applicant, despite being aware of his criminal background and he along with his two sons – accused nos.4 and 6, Wasim and Naseem would provide muscle power and their services could be utilized to terrorize and/or intimidate the slum dwellers. Mr.Pasbola would submit that the applicant expressed his reservation and objected to the involvement of deceased Abdul Munaf in the SRA project and by relying upon the statement of Sapan Kumar Rai, who has stated that the applicant had informed him that he did not want to work with deceased, and Peshkar Khan and his sons and Riyaz Bhati would complete the project with the help of other financiers, it is submitted that the applicant attempted to bring other developers into the project. Attributing conspiracy hatched on part of the applicant to eliminate Munaf so as to exclude him from the project, it is submitted that his application deserve to be rejected. Mr.Pasbola would rely upon the decision of the Apex Court in case of Prasad Shrikant Purohit Vs. State of Maharashtra, 2015(7) SCC 440, and

would highlight on the parameters for entitlement of a person accused under MCOCA to be released on bail.

10 Section 21(4) of the MCOCA prescribe, that notwithstanding anything contained in the Code, no person accused of an offence punishable under MCOC Act, shall be released on bail unless sub-clause (b) of sub-section (4) is complied with, i.e. the Public Prosecutor is given an opportunity to oppose the application for bail and the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail.

In order to appreciate the rival contentions, when the material in the charge-sheet is carefully perused, which charge the applicant under MCOCA under the Special statute, the observations of the Hon'ble Apex Court in case of *Ranjitsingh Brahmasingh Sharma vs. State of Maharashtra*, 2005(5) SCC 294, are to be noted.

“38 We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under [Section 279](#) of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or

indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

44. The wording of [Section 21\(4\)](#), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

11 The aforesaid observations were affirmed by the Apex Court in case of State of Maharashtra vs. Vishwanath Maranna Shetty, 2012 (10) SCC 561, when it is reiterated that while having regard to the provision contained in sub-section (4) of Section 21,

the Court may have to probe deeper so as to enable it to arrive at a finding that the material collected against the accused during investigation may not justify the judgment of conviction. The Court at the time of considering application for grant of bail, shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. It was once again reiterated that when the prosecution is for offence under a special statute, and the statute contain specific provision for dealing with the matters arising thereunder, the provision of looking out for the culpability of the accused and his involvement in the commission of an Organized crime directly or indirectly, cannot be ignored. It has to be borne in mind that the *non-obstante* clause contained in sub-section (4) of Section 21 of the MCOCA, which deal with the power to grant bail to a person accused of having committed offence under the Act is not only subject to the limitations imposed u/s.439 of Cr.P.C, but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) regarding the accused not being guilty, has to be based on 'reasonable grounds'.

12 In the wake of the aforesaid authoritative pronouncement, providing a guiding principle, I have appreciated the material compiled in the charge-sheet against the present applicant. The MCOCA arises out of an FIR of Juhu police station dated 17/8/2020 being C.R.No. 258/2020 and the complainant, nephew of deceased lodged a report about his uncle being murdered, and also revealed the background about his business. The prosecution case is on account of the business which the applicant is engaged in, he was apprehensive about the

involvement of the deceased into the project and with the said motive, he was eliminated by hatching a conspiracy.

The applicant is in business of construction along with other business and he is a partner in various firms undertaking various projects of construction. He is also a partner in the firm known as 'M/s.EMEL Ashok Enterprises', vide a Partnership Deed executed on 9/1/1995, which is duly registered, the other partners in the firm, being Vijay Sharma and Salim Baig.

A development of a property situated in City Survey No. 515 and 516 at village Vile Parle (W), Taluka Anderi, was proposed by the said firm and the said plot of land had various hutments. The occupants had formed a Society known as 'Basera Co-operative Housing Society', and issued Power of Attorney in favour of one Ramdular Yadav. The applicant was also issued a Power of Attorney for developing the said property on 16/1/1998 under which the applicant was authorized to enter into the agreement with the members of the Society and start the work of development under the provisions of SRA. Accordingly, the agreements were signed by the applicant with the tenants/ occupiers and the concerned authority had issued Annexure II and Annexure III in respect thereof.

In the interregnum, a Writ Petition was filed in the High Court, raising the issue whether a plot reserved for public purpose can be utilized for redevelopment under SRA and this covered the project of the applicant and interim orders came to be passed, restraining development of all such properties, including the property where the development was proposed by the firm of the applicant. Since the matter was pending for a considerable point of time, the property could not be developed. The partnership deed was reconstituted in the wake of one of it's partners and the

applicant held his share in the minority as against the two partners who held the majority shares of the firm.

13 The co-accused Peshkar Khan came to be appointed as a caretaker in respect of the said property by virtue of a Memorandum of Understanding executed on 21/12/2018 since it is the submission of the applicant that he was resident of the locality and who would represent the residents of the locality more effectively. He was held entitled to receive a sum of Rs.30,000/- per month and additional amount of Rs.75,000/- per month after receiving all approvals and on commencement of construction. A flat was also to be allotted to him which was estimated to be Rs.Five crore. The said MOU is a part of the charge-sheet. The payments were accordingly made to the co-accused Peshkar Khan and statement of Mahavir Chajed compiled in the charge-sheet refer to the same.

14 Another MOU came to be executed on 14/3/2019 introducing the deceased as a partner/financer, who was to finance the project and obtain the Letter of Intent (LoI) of the project. A copy of the MOU which form part of the charge-sheet reflect that induction of the deceased in partnership do not change the share of the applicant, which continue to be 25%, whereas the share of the other two partners Vijay Sharma and Salim Baig underwent a change and Munaf, the deceased took 10% from each of these partners. The MOU being executed in the year 2019, was given effect to and the case of the prosecution that the applicant was not wanting the deceased to proceed with the redevelopment project

apparently, cannot be considered as the motive for commission of the crime. The MOU did not vary the rights of the applicant in any manner, and in fact, as per the said MOU, the deceased was to infuse money in the project which was standstill in absence of finances with the partnership firm.

15 An FIR No.258/2020 came to be registered on the complaint filed by the deceased, where he alleged that there was a conspiracy hatched by Abdul Rehman @ Sonu Abdul Latif Shaikh to eliminate him, and the deceased had tendered the transcript of the conversation which is compiled in the charge-sheet, which do not involve the present applicant. The complainant himself had narrated that the father of accused no.1 Sonu @ Abdul Latif Shaikh owned certain land which was acquired by deceased Munaf from them and some portion of the land was being acquired for road widening project and therefore, they could not fetch the price that was estimated. There was some discord between the deceased and Sonu as he carried a grudge that they have been cheated and in August-September 2019, the accused no.1 Sonu gave a contract of killing the deceased to one Ankit Trikha Panjabi who, however, refused to implement the conspiracy on the ground that deceased Munaf was a namazee. Munaf thereafter called Ankit to his office and had video recorded the conversation, which is part of the charge-sheet and he has referred only to Accused no.1 Sonu, as the one who assigned the contract to eliminate him. He do not even attribute any role to Peshkar Khan and his sons. The complaint to that effect were filed by the deceased Munaf to Joint Commissioner of Police on 11/10/2019 against accused no.1 Sonu. The statement of Ankit Panjabi was also recorded by D.N. Nagar police station,

who again referred to accused no.1 Sonu. The deceased thus faced threats from Sonu and when the complaints to that effect included in the charge-sheet, reflect the said threats.

16 The prosecution rely upon a 164 statement of a witness, who was working as supervisor with M/s.EMEL Ashok Enterprises and he referred to the partnership firm as well as the various projects undertaken by them. He make a specific reference to the redevelopment project undertaken by the firm and entering into agreement with the slum dwellers, but since the project was stayed by the High Court, he left the job in 2013. In the year 2014, he was called back by the applicant since the stay was vacated, he referred to the discord between the partners of the said firm and state that Vijay Sharma had no finance to continue the project and therefore, he introduced Munaf Shaikh to the partnership in the year 2019.

Munaf Shaikh, Saleem Baig and Vijay Sharma held a meeting of the resident of the slum and declared that they would be undertaking the said project. However, the meeting was not attended by the applicant. The witness state that the applicant was apprehensive that he would loose the project and therefore, he decided to implement the said project with the help of Peshkar Khan and his two sons and one Riyaz Bhati. He organized a meeting since he wanted to introduce Riyaz Bhati as a builder and the witness state that he had warned the applicant that Peshkar Khan and his sons and Riyaz Bhati are criminals and he will not be in a position to work with them. It is stated by him that the applicant responded by saying that if Munaf Shaikh and Salim Baig are to be stalled, Peshkar Khan will have to be in-charge. What is held to be

incriminating against the present applicant is statement of the said witness who said to him on one occasion that enough is enough, now something will have to be done about Munaf and he will have to be removed from the way.

Another statement recorded u/s.164, of one estate agent is relied upon by the prosecution when he state that during Iftaar, Peshkar Khan had organized a party and declared that the redevelopment work in Junaid Nagar shall be carried out by the applicant and builder Riyaz Bhati. In August 2020, after Munaf was murdered, he received phone call from the applicant and he disclosed to him that Munaf was murdered. Upon that, the applicant is alleged to have told him that he should keep him updated and after two days, he received phone call from Peshkar Khan and he disclosed to him that there is a general discussion that his men had caused death of Munaf. He asked him whether the names have appeared in newspaper. After two days, Naseem called the said witness and asked him for some help. Naseem called the said witness and told him that Ashok Chhajed should be asked to pick up his phone, otherwise,he will disclose the name of the planner.

17 A supplementary statement of Sapan Kumar Rai reiterate that the applicant has told him that Munaf shall be removed from the way and Peshkar Khan, Naseem and Wasim should be allowed to work and whatever amount is required for eliminating Munaf, including engaging lawyer shall be arranged by him. The witness disclose that this was told to him when he resisted the applicant from taking the project further with Peshkar and his sons.

The statement of Sapan Kumar Rai recorded under Section 161 of Cr.P.C is also on similar lines. The statement of one

Imran Mumtaz Khan is also compiled in the charge-sheet, where there is a reference of applicant disclosing to Salim Baig that he was not desirous of working with Vijay Sharma, but since he had invested huge amount in the project, it was not possible to remove him. According to him, the applicant had told Peshkar Khan to search a new developer for the project. A reference is made to the meeting of the Slum dwellers summoned in March 2019 which was attended by Saleem Baig, Vijay Sharma and Imran Khan, but the applicant was not present in the said meeting.

18 Statement of Vijay Sharma, the partner of the firm is also recorded and he give a similar version that there was dispute in the partnership and when Munaf Shaikh become active in the project, the applicant do not approve of it. Shahabuddin Khan whose statement is relied upon the prosecution also make a mention of the applicant opposing the interest shown by the deceased and he make a mention of an incident when Riyaz Bhati and Ashok Chhajed (applicant) arrived on the spot with bouncers and security guard where Peshkar Khan and his son had threatened that anybody who would oppose the project would have to meet dire consequences and that Riyaz Bhat is the boss.

19 Several other statements on the similar lines compiled in the charge-sheet make a reference of the applicant not approving the induction of the deceased in the partnership firm, but there is no material in form of any positive evidence that he had taken any steps for giving effect to the act of eliminating the deceased. Only on the ground that he was not pleased with his induction, cannot be

said to attribute a motive to the applicant, particularly when induction of Mr. Munaf is in the year 2019 itself by executing an MOU and ultimately, Munaf was financing the project and he was not a developer. No reason can be ascertained as to why the applicant intended to replace him since he was a financier and Bhati was a builder/developer. The material compiled in the charge-sheet charging the applicant for the offence under MCOCA thus is only the alleged motive that is attributed, without any positive evidence demonstrating the actus rea, or linking him to the murder of the deceased.

20 The submission of the applicant is, from the CDRs compiled in the charge-sheet, he was not in Mumbai from 12/3/2020 to 17/4/2020 and he was in Rajasthan and the CDRs establish so. After picking up his family, he again left Mumbai on 18/5/2020 and it is submitted that during this period, there was not a single call exchanged between the applicant and any of the accused.

21 As far as the transcript of the telephonic conversation between the applicant and witness Imran Khan dated 17/8/2020 is concerned, though Mr.Pasbola has read the transcript, to mean that the applicant had participated in the crime, I do not find any such conversation, indicating it to be so. The three transcripts compiled in the charge-sheet do not lead to such an inference. As far as the transcript of the conversation between the applicant and Imran dated 22/8/2020 where a discussion take place about between Imran and Naseem, in no case indict the present applicant. The transcripts, therefore, do not take the prosecution case any further.

The charge-sheet contain only some material which make an attempt to attribute motive to the applicant for eliminating the deceased, in absence of any other material barring the motive, the applicant deserve his release on bail.

22 On perusal of the material compiled in the charge-sheet, I am satisfied that there are reasonable grounds for believing that the applicant is not guilty of the offence and in absence of any antecedents being attributed to him, he is not likely to commit any offence while on bail. Hence, the following order :-

ORDER

- (a) In the event of his arrest, the Applicant – Ashok Mohanraj Chhajed in connection of C.R.No. 118/2020 registered with DCB, CID Unit IX, shall be released on bail 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 and should not tamper with evidence.
- (c) The Applicant shall attend the trial regularly unless and until exempted by the Special Court.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)