

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.684 OF 2020

Tatyasaheb Laxman Karande

Applicant

versus

The State of Maharashtra

Respondent

Mr.Satyam M. Nimbalkar with Mr.Abhishek U. Arote and Mr.Shivam H. Nimbalkar, Advocate for applicant.

Mr.N.B.Patil, APP, for State.

API M.K.Palke, Baramati Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th October 2022

PC :

1. This is an application for bail in C.R No.378 of 2019 registered with Baramati City Police Station for offences under Sections 384, 385, 386, 120-B, 506 r/w 34 of Indian Penal Code. During investigation approval was sought to invoke provisions of Maharashtra Control of Organized Crimes Act ('MCOC Act') and thereafter provisions of Sections 3(1)(i)(ii) and 3(4) of MCOC Act were invoked.

2. The FIR was registered on 9th May 2019. In nutshell the case of prosecution is that from 4th May 2019 to 9th May 2019 the accused no.1 and others threatened the complainant that obscene video clips of the complainant with women would be made viral. From time to time amount was demanded. Initially there was demand of Rs.30 crores, which was subsequently enhanced to Rs.100 crores. The trap was arranged and accused were apprehended while accepting Rs.4.90 lakhs.

3. Learned advocate for applicant submitted as follows :

(i) The applicant is in custody from 10th May 2019. There is no progress in the trial. Charge has not been framed;

(ii) Offence has been registered on account of political rivalry between accused no.1 and respondent no.1;

(iii) Role attributed to the applicant that he was present along with accused no.1 while threats were issued to the complainant;

(iv) At the most, offence punishable u/s.384 of IPC could be made out in the light of definition of extortion u/s.383 of IPC. In the present case, Section 386 of IPC is also invoked which spells out extortion by putting a person in fear of death or grievous hurt. The facts do not justify invocation of said provision Punishment for Section 384 of IPC would extend up to 3 years;

(v) There is no evidence to invoke provisions of MCOC Act against applicant. There is no evidence to show that applicant was involved with gang leader at any point of time in the past;

(vi) There are no criminal antecedents against applicant;

(vii) The applicant had never acted in crime syndicate with gang leader;

(viii) Requirement of invoking the provisions of MCOC Act is that there should be more than two or more charge sheets against the accused;

(ix) Reliance is placed on the decision of Supreme Court in the case of **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat** (Petition for Special Leave to Appeal [Cri.] No.1815 of 2022).

4. Learned APP submitted that there is sufficient evidence on record to show involvement of applicant. The prosecution has filed affidavit-in-reply opposing application for bail. It is submitted that the FIR clearly indicates that applicant was present along with co-accused while extortion demand was made by accused. The applicant was present in the hotel where demand money was provided and trap was laid to apprehend the accused. The CCTV footage of the hotel shows involvement of applicant. Huge amount was demanded by the complainant. The applicant is closely associated with accused no.1. The applicant was constantly in touch with accused no.1 on telephone. The car was seized from the applicant which is in the name of father of applicant. In the light of clear involvement of applicant along with accused no.1 against whom there are several cases, provisions of MCOC Act can be invoked against applicant. Learned APP places reliance on the decision of this Court in the case of **Govind Sakharam Ubhe Vs. The State of Maharashtra** (2009-ALL MR [Cri.]-1903).

5. The applicant is in custody for a period of 3½ years. The case of prosecution that accused no.1 and the complainant are political rivals. Allegedly there is demand of huge amount from complainant by accused no.1 and his associates. There is no evidence on record to show that applicant has at any point of time made any demand. The facts of the case would indicate that complainant was threatened and induced to part with amount. Section 383 of IPC defines extortion and punishment for extortion is defined u/s.384 of IPC, which may extend up to maximum 3 years. Section 386 of IPC relates to extortion by putting a person in fear of death or grievous

hurt and punishment prescribed for this offence may extend up to ten years. Prima facie applicability of Section 386 of IPC in the facts of present case is doubtful. Charge sheet is filed. The applicant was not involved in any other case in the past. Apart from the present incident, there is no material on record to show that applicant and accused no.1 had, in the past, indulged in any other criminal act. There is no material on record to show that applicant was part of any criminal act. In the recent decision of Hon'ble Supreme Court in the case of Mohamad Iliyas Mohamad Bilal Kapadiya (supra), the Supreme Court has considered the submissions that only one offence was registered against accused therein. Supreme Court has observed that for invoking provisions of Gujarat Control of Terrorism and Organised Crime Act, 2015, the Court should be of the prima facie view that for invoking said Act, conditions stipulated therein are fulfilled, such as :

- (i) that such an activity should be prohibited by law for the time being in force;
- (ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more;
- (iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate;
- (iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and
- (v) that the charge-sheet must have been filed within a preceding period of ten years; and
- (vi) that the Courts have taken cognizance of such offences.

6. The applicant is not involved in any other case along with gang leader nor there is any material to show that he was actively involved with gang leader in any act of the gang or syndicate. Role attributed to applicant is that he was with accused no.1 whenever threats were issued. Considering the facts of case, bail can be granted to the applicant.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R No. 378 of 2019 registered with Baramati City Police Station, District Pune, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of sureties;
- (iv) The applicant shall report Baramati City Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with evidence;
- (vi) The applicant shall attend Trial Court on dates of hearing regularly, unless exempted by Trial Court for some reason.

(PRAKASH D. NAIK, J.)

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