

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1155 of 2021

Sanjog Suresh Tingote .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Ravi Dwivedi for the applicant.
Mr.S.V.Gavand, APP for the State.
PSI Shri Jamadar from Santacruz police station.

CORAM: BHARATI DANGRE, J.

DATED : 16th SEPTEMBER 2022

P.C:-

1 The applicant is charged for the offence punishable under Sections 302, 307, 143, 144, 147, 149, 387, 449 and 201 IPC along with Sections 3, 4, and 25 of the Arms Act and Section 37(1) and Section 135 of the Maharashtra Police Act. He also face charge under the provisions of MCOCA, after the necessary approval was granted. The applicant came to be arrested on 28/7/2016 and since then, he remain incarcerated.

2 The case of the applicant which can be discerned from the charge-sheet as well as the affidavit of the prosecution placed on record, is to the effect that on 27/7/2016, at around 17.45 hours, six unknown persons armed with deadly weapons like fire-arm, choppers and sharp weapons entered into the office of HDIL situated at Santacruz.

3 The case of the prosecution, as can be reflected from the FIR is to the effect that around 17.45 hours, five unknown persons with the description given, armed with pistol, chopper and knife entered into the office of Nadeem and the informant noticed one person coming out of the office, shouting that firing had taken place in the office.

4 Nadeem bhai and Babubhai are the two deceased who were found in pool of blood and they were immediately taken to the hospital. This resulted in registration of C.R.No.394 of 2016 against unknown persons and four accused persons came to be arrested on 28/7/2016, which include the present applicant. The fifth accused person came to be arrested on 31/7/2016.

While the offence was under investigation, of hatching a conspiracy to commit murder of deceased and forming an unlawful assembly, it was revealed that in the month of November 2013, at the instance of gang leader Zulfikar, his associates had come to office of HDIL and they had demanded ransom to facilitate release of Zulfikar's brother, Accused no.1

Mohsin who was detained in a murder case. It is alleged that threats were given to part with the amount. In November 2013, gang leader Zulfikar and his associates are alleged to have vandalized Hotel Pakeeza for extortion and offence came to be registered against him and his associates.

4 Considering the involvement of the gang leader Zulfikar who was indulging himself in various offences like extortion, murder, threat to life and suspecting that he had played an active role, the provisions of MCOCA were invoked, and after completing the necessary formalities of obtaining approval from the Addl. Commissioner of Police, West Region, Bandra, the investigation was conducted for commission of offence under the MCOCA. Sanction was accorded u/s.23(2) by the Commissioner of Police for filing charge-sheet and charge-sheet was filed against five arrested persons and one absconding accused who is Kalim Rauf Saeed, who came to be arrested lately.

5 As far as present applicant is concerned, he is alleged to be a member of the gang belonging to Zulfikar and the charge-sheet accuse him of being part of the conspiracy to commit the offence of murder on the day when two persons were actually killed and one person was injured. It is alleged that he provided assistance to the gang by plying the accused persons in his rickshaw and bringing them on the spot, where the alleged offence has taken place. It is alleged that he himself drove the rickshaw and assisted the co-accused, in reaching the spot.

6 Reliance is placed upon the panchnama of the CCTV footage drawn from Nisarg Apartment, approximately at a distance of 1.6 km from the spot, where the applicant is seen in the company of the co-accused and the case of the prosecution is they gathered there and along with one other auto-rickshaw, they left the place, to reach the spot. Admittedly, there is no CCTV footage at the spot where the incident had taken place.

It is the case of the prosecution that the accused no.1 had given a sum of Rs.5,000/- to the applicant towards expenses and he has been identified him as rickshaw puller from whose rickshaw the co-accused Mohsin stepped out along with weapons. During the confessional statement of co-accused, the presence of the applicant on the spot has also surfaced on record. However, none of the statements in the charge-sheet attribute any overt act to him, except that he was also a part of the conspiracy for which he would face a charge u/s.120B of the IPC.

7 It is not the case of the prosecution that the applicant was the assailant, as according to the prosecution case, after he dropped the accused persons on the spot, he left. As far as the material to charge him u/s.120B of IPC is concerned, the only material is the statement of the co-accused which is recorded u/s.18 of the MCOCA.

In order to justify the charge under MCOCA, which allege that he is a member of the crime syndicate headed by

Zulfikar, against whom six offences are registered, the affidavit of the prosecution is silent about his involvement in any of the offences in which the gang leader is arraigned as an accused. No commonality is established against the present applicant, if at all he is to be accused as a Member of the Organized Crime Syndicate.

The Hon'ble Apex Court in case of Mohamad Ilyas Mohamad Bilal Kapadiya Vs. State of Gujarat (Special Leave to Appeal (Crl.) No.1815/2022) has recently crystallized the position as regards the accused who is not arraigned as an accused along with the Crime Syndicate, but for the first time, who is arraigned as an accused in the subject C.R, where MCOCA has been invoked in the following words :

“Mr.Rohatgi submits that in the present case, the second requirement is not satisfied. He submits that in the chart wherein all the crimes registered against the petitioner/applicant have been listed, it could be seen that only FIR No.64 of 2021 dated 26th January, 2021, is in respect of an activity committed by two members of the syndicate. He, therefore, submits that requirement of filing of more than one charge-sheets is not satisfied in the present case.

Ms.Deepanwita Priyanka on the contrary submits that all the offences alleged in the FIRs which are given in the Chart, are directly or indirectly committed for the benefit of the crime syndicate of which the petitioner/applicant is a member. She relies on the judgment of this Court in the case of Prasad

Shrikant Purohit vs. State of Maharashtra, reported in (2015) 7 SCC 440.

Undisputedly, the perusal of the chart would reveal that only one offence, i.e. FIR No.64 of 2021 would show that it has been committed by seven accused out of which two are the members of the syndicate. In respect of offences at Serial Nos.1 to 4 in the chart, no members of the syndicate are arrayed as accused”.

8 The applicant is incarcerated since 2016, i.e. more than six years, and though the charge has been framed recently in the year 2022 and the prosecution has cited 129 witnesses, the culmination of the trial do not appear to be in foresight.

Considering the material compiled against the applicant in the charge-sheet and when the invocation of the provisions of MCOCA against him prima facie appear to be doubtful, he cannot be incarcerated any further. He may take the consequences of the accusations faced by him and the charges levelled against him when he face the trial. However, since the prosecution has not brought on record any antecedents of the applicant, nor has it justified that the applicant is at flight risk, he deserve his release on bail on merits as well as on the long incarceration for six years.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present

applicant, and shall in no way, bind the Special Court while trying the applicant for the offence, with which he is charged.

Hence, the following order :-

O R D E R

- (a) The Applicant – Sanjog Suresh Tingote in connection with C.R.No.394/2016 registered with Santacruz Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties of the like amount.

The applicant shall be released on cash bail of Rs.25,000/- in lieu of sureties for a period of six weeks. During the said period, the applicant shall arrange for the sureties.

- (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. The Applicant should not tamper with evidence.
- (c) The Applicant shall attend the trial on regular basis.

- (d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.
- (e) The applicant shall not leave City of Mumbai without prior permission of the Court .

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)