IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1599 OF 2021

Shakir Khwaja Peer Sayyed	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

...

Mr.Amin Solkar with Ms.Misbaah Solkar for the Applicant.

Mrs.Aruna Pai, Public Prosecutor with Mrs.Rutuja Ambekar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 18th OCTOBER, 2022
PRONOUNCED ON : 14th NOVEMBER, 2022

P.C:-

1. On being charged for the offences punishable under Sections 302, 394, 397, 411 read with Section 34 of the Indian Penal Code (for short, **"the IPC"**) and under Sections 3(1)(A), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (for short, **"the MCOC Act"**), the applicant seek his release on bail.

On 06/09/2022, a complaint was lodged by Yogesh Kamble invoking Section 394 read with Section 34 of IPC by reporting about an incident of chain snatching by two persons, while one Shashibai Ubale was walking towards the bus-stop from her residence at Ramabai Nagar, Ghatkopar (E), Mumbai and the two persons attempted to snatch her chain, but when they failed to catch hold of it, they pulled her purse, which she firmly held. In the whole struggle to clinch on her to her bag, she fell on the ground and was dragged for few meters. On being hospitalized, she succumbed to the injuries and, therefore, Sections 302 and 397 of IPC were added.

2. The applicant came to be arrested on 22/11/2020. Though he was not named in the FIR, but according to the prosecution, he was receiver of the stolen property from accused No.4 and it was recovered from the house of the applicant under the disclosure statement of accused No.4 on 15/09/2020. The role of the applicant in the entire episode of chain snatching was discerned on the basis of the CDR and his contact with the other accused persons. The prosecution allege that the applicant purchased a bike from the amount received and he had indulged himself in illegal activities.

This constrained the prosecution to obtain prior approval from the Additional Commissioner of Police, East Region, Mumbai for invoking the provisions of the MCOC Act in

C.R.No.559 of 2020. On 03/12/2020, sanction was granted by the Commissioner of Police, Brihan Mumbai under Section 23(2) of the MCOC Act for prosecuting five accused persons under Sections 3(1)(i), 3(2), 3(4), 3(5) of the MCOC Act. The sanction order allege that the applicant alongwith the co-accused are active members of an organised crime syndicate, headed by accused No.1 Mohammed Yasin Hanif Khatri and the instant crime has been committed with the object of obtaining pecuniary gains, economic and other advantages for the members of organised crime syndicate by use of force and violence.

3. The investigation proceeded further under the provisions of the MCOC Act and on completion of the same, charge-sheet came to be filed. The applicant remain incarcerated, awaiting his trial before the Special Court under the MCOC Act and his bail application came to be rejected by the Special Court on 20/03/2021, with the following observations :-

> "20. Further it can be said that on the basis of the material placed on record, the applicant has participated in the crime actively and therefore there is no hesitation to conclude that automatically he has become the member of organized crime syndicate which was being run by accused No.1 as the gang leader. Therefore, I do not find merit in the arguments advanced by the Learned advocate for the applicant.

> 21. On perusal of the record, it would reveal that the confessional statement of accused No.3 Faees and accused No.2 Warris Mohd. have been recorded under Section 18 of the MCOCA Act. The confessional statement of Faees states about the involvement of present applicant in commission of crime. The very fact that the disclosure statement made by the co-accused has resulted in the recovery of the muddemal property involved in this crime goes to give corroboration on the point of involvement of the applicant in the commission of the crime. The same is the position in respect of the confessional statement of accused Warris."

4. I have heard learned counsel Mr.Amin Solkar for the applicant and Mrs.Pai, learned Public Prosecutor for the State. With their able assistance, I have perused the charge-sheet placed on record.

Mr.Solkar would invite my attention to the material compiled in the charge-sheet and he would submit that the applicant has nothing to do with the alleged offence registered vide C.R.No.559 of 2020, as he is not the accused, who has participated in the incident of chain snatching, in which the deceased fell to the ground and succumbed. He would submit that his name is not reflected in the FIR and there is no material to show that he is a member of organised crime syndicate as alleged. He would submit that merely because some recovery has been attributed to him at the instance of accused No.4 in his disclosure statement, based on which the memorandum panchnama has been prepared, it is not sufficient to indict him in the offence. Apart from this, he submits that the investigation agency has failed to confront the stolen property to the son of the deceased in order to establish that it is this property, which was a part of the subject crime and which was recovered from the residence of the applicant, at the instance of the other co-accused.

Mr.Solkar would submit that it is only the confessional statement of accused Nos.2 and 3, on which the applicant has been indicted. Undisputedly, even accepting the veracity of the statement and it's truthfulness, the applicant was not present on the spot at the time when the alleged incident of chain snatching took place. Mr.Solkar would submit that the contact, on the basis of which the connection is sought to be established with the other co-accused, is also far fetched as the mobile SIM card of which the CDR has been obtained and compiled in the charge-sheet, is not seized from the applicant and there is no CDR collected in respect of the Vodafone SIM card, which was seized from him on 22/11/2020. He would vehemently submit that there is no material in the charge-sheet, which would establish the role of the applicant as a member of the organised crime syndicate, as no commonality has been established by the prosecution. Merely because there are offences registered against the gang leader, without any participation of the present applicant in any of the said offences, according to Mr.Solkar, the provisions of the MCOC Act cannot be invoked and he cannot be kept incarcerated further. He would place reliance upon the decision of this Court in the case of ***Dinesh Bhondulal Baisware Vs. State of Maharashra***[1] as well as another decision of this Court in the case of ***Fahim Akhtar Abdul Majid Khan Vs. The State of Maharashtra (Bail Application No.343 of 2020 decided on 25/11/2021).*** Apart from this, he would also rely upon the decision of the Hon'ble Supreme Court in the case of ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Ors.***[2] as well as in the case of ***State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal & Ors.***[3]. He would fall back on the observations of the Hon'ble Apex Court in the case of ***Ranjitsing*** (supra), to the following effect :

> "31. Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'Organized crime syndicate' refers to an 'Organized crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "exude generics"/ "noscitur-a-sociis" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in Section 146 and 153A of the Indian Penal

1 2016(4) BomCR(Cri)149
2 (2005) 5 SCC 294
3 (2007) 4 SCC 171

> Code. The word 'intimidation' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coercion' finds place only in the Contract Act. If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which prima facie, does not appear to have been intended by the Parliament.
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> 32. The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of Organized crime and committed by an Organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA.
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> 33. Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA"

5. Per contra, Mrs.Pai, the learned Public Prosecutor, would rely upon the affidavit filed by the State to indicate the role attributed to the applicant in the subject CR, which has invoked the provisions of the MCOC Act. She would rely upon the decision of this Court in the case of ***Govind Sakharam Ubhe Vs. State of Maharashtra***[4] to buttress her submission that MCOC Act targets the unlawful activities of the organised

4 2009 ALL MR (Cri) 1903

crime syndicate and since the Act contemplates a situation where a group of persons as members of organised crime syndicate, indulge in organised crime syndicate by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person. It is not necessary that the applicant should be member of the crimes committed by the gang leader. She would submit that for an activity to be a 'continuing unlawful activity', the activity must be prohibited by law; it must be a cognizable offence punishable with imprisonment of three years or more; it must be undertaken singly or jointly; it must be undertaken as a member of an organised crime syndicate or on behalf of such syndicate, in respect of which more than one charge-sheet have been filed before a competent court. Mrs.Pai would specifically rely upon the following observations in the said judgment :-

> "36. The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as ' in respect of whom more than one charge-sheet have been filed'."

6. She would further rely upon the latest decision of the Hon'ble Supreme Court in the case of ***Zakir Abdul Mirajkar Vs.***

State of Maharashtra & Ors.[5], where the Hon'ble Apex Court has relied upon the observations of the Division Bench of this Court in the case of ***Govind Ubhe*** (supra) to submit that the applicant is accused of a serious offence under the special statute like MCOC Act and he does not deserve his release on bail is her submission.

7. On the charge-sheet being perused, it is revealed that on 06/09/2020, at around 06.50 hours, two youths between the age group of 25 to 30 years, driving themselves on a silver colour motorcycle, snatched 5 grams Mangalsutra/gold chain of Shashibai @ Sahabai Lahu Ubale, resident of Ramabai Nagar, Ghatkopar (E), Mumbai, when she was walking on the service road of Eastern Highway, Ghatkopar. The rider was wearing a helmet and the pillion rider, who snatched the chain (Mangalsutra), was wearing a mask. They forcibly pulled the chain and in the incident, the victim sustained injuries, which resulted into lodging of a complaint. The complaint is filed by one Yogesh Kamble, the Constable against two unknown persons alleging the forcible snatching of Mangalsutra.

The complainant recorded his supplementary statement, where he stated that while attempting to flee away on being hit

5 2022 SCC OnLine SC 1092

by a motorcycle rider, face mask fell off and the rider lost his balance and the complainant saw his face clearly and stated that he could clearly identify the two persons on the bike. Shashibai succumbed to the injuries, which resulted in invoking the offence punishable under Section 302 of IPC. Admittedly, the applicant is not one amongst the two persons, who indulged themselves into the act of snatching of the neck piece from the deceased and who is responsible for her death. However, during the course of investigation, the prosecution relied upon the CDR, which has disclosed that prior to commission of offence, the applicant was in touch with other accused persons. Further, the CCTV footage is also collected where the applicant is seen disposing off the snatched gold articles. It is alleged that after arrest of the four accused persons, the present applicant absconded and switched off his mobile phone and he used a stolen mobile for the purpose of establishing contact with the co-accused, for which another crime is registered. The prosecution relied upon the confessional statement of accused Nos.2 and 3 recorded before the competent authority, which has assigned a specific role to the present applicant of disposing off the stolen gold article. The prosecution thus alleges that the co-accused hatched a conspiracy to snatch the gold chain of the deceased and commit murder and the applicant played a very active role.

8. When the entire charge-sheet is scanned, except the CDR of the mobile phone without the actual conversation being revealed, there is no material to establish the conspiracy hatched to commit the offence of robbery and murder. From the investigation, it can be seen that the death of the deceased was accidental and in an attempt to snatch the chain, she was dragged, sustained injuries and succumbed to the same. Even assuming for a moment that there was a conspiracy to rob her of the neck piece, it cannot be said that there was a conspiracy to commit her murder.

9. When the entire charge-sheet is perused, including the confessional statement of accused Nos.2 and 3, the present applicant is attributed a role of receiving the stolen property, which would at the most, invite his conviction under Section 411 of IPC. The conspiracy to commit murder being not brought on record, *prima facie*, the applicant cannot be said to be guilty of the offence of committing murder of deceased. In any case, the prosecution will have to establish it's case beyond reasonable doubt by bringing cogent and reliable evidence on record.

10. As far as the accusation that the applicant is a member of the organised crime syndicate, it can be seen that he is not a participant in any of the offences, which are committed by the gang leader or by any of the member of the organised crime syndicate. The prosecution alleges that accused Mohammed Yasin Hanif Khatri is the gang leader of the organised crime syndicate and the said gang has committed series of offences, including offence by use of violence or threat of violence or intimidation or coercion or by other unlawful means with the motive of gaining illegal pecuniary benefits for alleged organised crime syndicate. The affidavit makes a reference to the seven offences registered against the gang leader, the last offence being the one registered at Pantnagar Police Station i.e. C.R.No.559 of 2020 in which the provisions of the MCOC Act are invoked. In all other six offences, there is no commonality established as the members of the syndicate and it is very clear that it is only for the first time, the applicant is alleged of having committed an offence with the gang leader.

On the point, whether a commonality is necessary to be established in order to prove that the applicant is a member of organised crime syndicate, it is necessary to make reference to the observations of the Hon'ble Supreme Court in the case of

Lalit Somdatta Nagpal (supra), where the following argument was advanced on behalf of the accused :-

> "22. Mr.R.F.Nariman, appearing for the respondents in the first two Special Leave Petitions also referred to the provisions of Section 2(d) of MCOCA and laid special emphasis on the expression **"continuing".** He urged that **"continuing unlawful activity"** would necessarily mean continuous engagement in unlawful activity where there would be a live link between all the different offences alleged. According to Mr.Nariman, isolated incidents spread over a period of 10 years, involving different types of offences, would not attract the provisions of MCOCA. Such activity must be such as to have a link from the first to the last offence alleged to have been undertaken in an organized manner by an organized crime syndicate. It was contended that there was nothing on record to indicate the existence of any organized crime syndicate for the purpose of carrying on any continuing unlawful activity as envisaged under Section 2(d) (e) and (f) of MCOCA."

While dealing with the said submission, the Hon'ble Apex Court has held as under :-

> "39. However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.
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> 40. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise

continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No.25/03 of Rasayani Police Station, Raigad, under Sections 468, 420, 34, Indian Penal Code and Sections 3, 7, 9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23(1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22nd August, 2005.

41. In addition to the above, a glance at the permission sought by P.I.L.C.B., Raigad, on 18th August, 2005 seeking permission for registering an offence under Section 1(ii) MCOCA 1999 against Lalit Nagpal, Anil Nagpal, Kapil Nagpal and one Parasnath Ramdular Singh will reveal that such permission was being sought for, as far as Kapil Nagpal is concerned, in respect of an offence allegedly under Section 63 of the Sales Tax Act, which in our opinion would not attract the provisions of the MCOCA."

11. Even in the case of ***Govind Ubhe*** (supra), the following observations of the Division Bench are very relevant :-

"37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines `continuing unlawful activity' sets down a period of 10

> years within which more than one charge- sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the `organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in."

12. Emphasis of the authoritative pronouncement is on the nexus or the link of the person with the organised crime syndicate, which has indulged itself into a continuing unlawful activity. If this link is not established, surely the person cannot be roped in is the prevailing position of law.

13. In ***Zakir Mirajkar*** (supra), the said position has been clearly reiterated in para 78 and in para 79, further clarified the settled position of law that the persons who are alleged to members of an organised crime syndicate need not have more than one charge-sheet filed against them in an individual capacity and the charge-sheets with respect to the organized crime syndicate are sufficient to fulfill the condition in Section 2(1)(d). However, this observation has to be read in the backdrop of the observations of the Division Bench of this Court in the case of ***Govind Ubhe*** (supra), where it is necessary to establish the link between a member with the organised crime syndicate.

The applicant has never participated in any unlawful activity committed by any member, singly or jointly, on behalf of the syndicate and, therefore, an individual crime in which he is charged, shall not be considered to be sufficient to sustain his conviction under the MCOC Act. As far as other Sections of IPC with which the applicant is charged, he may take the consequences on being established that he is guilty of sharing the common intention of committing an activity with the co-accused, which resulted in death of the deceased and that there was any intention to cause the death. In the wake of the above, the applicant need not be further incarcerated. Further, the applicant does not have any antecedents to his credit and, therefore, deserves his release on bail.

14. Needless to state that the observations made above are, *prima facie,* in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations, in any manner.

: **ORDER** :

(a) Application is allowed.

(b) Applicant – Shakir Khwaja Peer Sayyed shall be released on bail in connection with C.R.No.559 of 2020 registered with Pantnagar Police Station on furnishing P.R. Bond to the extent of Rs.30,000/- with one or more sureties in the like amount.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)

15. At this stage, Ms.Rutuja Ambekar, learned A.P.P. on behalf of the learned Public Prosecutor, makes a request to stay the above over.

The said request is declined, since I have recorded a finding that the material in the charge-sheet is, *prima facie*, insufficient to detain the applicant further, he being incarcerated almost over two years, on the basis of the scanty material compiled in the charge-sheet.

(SMT. BHARATI DANGRE, J.)