

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2465 OF 2021

Aliya @ Ali Afasar SayyadApplicant

Versus

The State of MaharashtraRespondent

Mr. Mahendra Shingade for the Applicant.

Mrs. Rutuja Ambekar, APP for the State.

CORAM : BHARATI DANGRE, J.

DATED : 20th JULY, 2022

P.C:-

1. The applicant is charged in CR No.21 of 2016 registered with Manpada Police Station u/s.394 r/w.34 of the Indian Penal Code and subsequently after obtaining prior approval, under Section 3(I)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 came to be invoked and he is charged under the said provision. Charge-sheet came to be filed before the Special Court (MCOC) and the Court has taken cognizance. He is facing charge in Special Case No.5 of 2016.

The applicant came to be arrested on 01.08.2019 and since then he is in custody.

2. The learned counsel for the applicant has placed before me an order passed in the case of co-accused Mohammed @ Mammu @ Saga Sayyed Mohammed Jakir Sayyad on 25.08.2021, who came to be released on bail by

considering that he has no complicity in the crime and the gang leader himself has been released on bail for lack of evidence by the Special Court. Apart from this, co-accused Aziz Hafiz Irani @ Sayed, Kantilal Anandji Shah and Kasim Afsar Sayyad Jaffery are also granted bail by the trial Court.

3. I have perused the said orders and heard the learned counsel for the applicant and the learned APP for the State.

4. The case of the prosecution as reflected in the FIR is to the effect that on 13.01.2016, while the complainant was enroute to her house, two unknown persons came on motorcycle. They were followed by two other unknown persons on the second motorcycle. The complainant alleged that one of the said person snatched her Mangalsutra and she shouted for help. The bystanders who arrived at the scene of offence, chase the said persons. Resultantly, one of the motorcycle alongwith the persons riding it tumbled down. One person was apprehended and the second person threatened the members of the public with the knife. The other motorcycles with its riders returned to the spot and the person who had fell down from the first motorcycle, managed to flee from the spot.

The person who was apprehended was one Haidarali Sarfaraj Kayam, who disclosed the name of other three accused-persons. This resulted in invoking Section 394 read with 34 of the IPC.

5. The prosecution case is the motorcycle which was used in commission of the crime was seized from Accused

No.5 Aziz Hariz Irani.

The confessional statement of Accused No.2 was recorded by the Deputy Commissioner of Police and he mentioned the applicant as the person who was involved in conspiracy for commission of organized crime and is engaged in chain snatching and is an active members of the organized crime syndicate headed by Accused No.3 – Mohhamad @ Aandu Afsar Sayyed.

The applicant is attributed with a role of snatching conspiracy for chain snatching and gaining pecuniary advantage. Reference is made to the cases registered against him. In Para 13 of the affidavit, it is stated that there is sufficient evidence to prove continuous unlawful activities headed by the present applicant and more than one charge-sheet of cognizable offence have been filed against the gang leader.

Learned APP, however, correct the said statement by submitting that the applicant is not alleged to be the gang leader.

6. There is no incriminating material against the applicant in the charge-sheet and though the learned APP allege that there is recovery of number plate of the motorcycle used in the crime, the same is not mentioned in the affidavit.

7. The implication of the present applicant is only on the basis of the statement of co-accused. It is not the case of the prosecution that he was present on the spot when the

crime took place. Only the basis of that, there are offences of similar nature pending against him he has been chargesheeted under the provisions of MCOC Act.

8. Perusal of the order passed by this Court on 25.08.2021, in similar circumstance while releasing the co-accused Mohammed @ Mammu @ Saga Sayyed Mohammed Jakir Sayyad, in absence of any evidence against him in the charge-sheet connecting in the organized crime. In any case, the Court has held that the gang leader himself has released on bail in the lack of evidence in the MCOC case. The confession statement of co-accused is not sufficient evidence at this stage to keep him in incarceration. I am, therefore, convinced with the order dated 25.08.2021, must be conferred on the Applicant No.2 and he is entitled to be released on bail.

9. Considering the nature of evidence and the facts of this case, the applicant deserves his release on bail, in spite of restrictions under Section 21(4) of MCOC Act.

10. Hence, the following order :-

ORDER

(a) Application is allowed.

(b) Applicant - Aliya @ Ali Afasar Sayyad shall be released on bail in connection with C.R.No.21 of 2016 registered at Manpada Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) 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.

(d) The Applicant shall make himself available as and when required by the Investigating Officer.

(SMT. BHARATI DANGRE, J.)