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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2363 OF 2021

Narayan Rameshchandra Datta] .. Applicant
vs.
State of Maharashtra] .. Respondent

Mr.Amin Solkar a/w Misbaah Solkar, for Applicant.
Smt.Rutuj Ambekar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 19TH AUGUST, 2022

P.C.

1] The applicant is seeking his release on bail in connection with CR No. 347/2016 registered with Central Police Station, Ulhasnagar, Thane, which invoke offences under Sections 341, 347, 363, 395, 401, 402, 120-B of the Indian Penal Code and 37(1), 135 of the Maharashtra Police Act. The provisions of Section 3(1)(ii), 3(2), 3(4) of the MCOC Act came to be invoked vide Special MCOC Case No.22/2017.

2] The incident which resulted in the subject CR being registered is a complaint filed by one Sandip Ashok Uttekar, who reported that he was working as Custodian in Writer Safeguard Pvt. Ltd. On 08.08.2016 he went to collect the cash amount from various agencies and while he was passing on Pralhad Shinde Bridge towards his Company in order to deposit the same, one bike dashed against him and two persons sitting on the said bike, being a blue colour Pulsor bearing No.MH-05-130 came near him and snatched the key of his bike.

It is alleged that they assaulted the complainant with a knife in their hand and forcefully snatched the bag containing cash from him. This resulted in the offence being registered which invoke Section 341, 347, 363, 334 of the Indian Penal Code against unknown persons on 09.08.2016.

3] On investigation being initiated, two co-accused were arrested on 14.08.2016 who disclosed that they alongwith their associates, which include the gang leader Dhananjay Khandu Jadhav @ Bodyman and the present applicant had committed the offence. It was narrated that one one Haresh @ Bittu Sanjay Komare who was also working in Writer Safeguard Pvt. Ltd. had given information to Karan vishnu Jalpur, co-accused, that the complainant was going to collect the cash from various establishments and the information was further transferred to other accused persons.

A conspiracy was hatched to commit the offence and during the course of investigation, the co-accused Karan also gave details of the vehicle which was a bike used by the complainant for collecting the cash.

4] The case of the prosecution is that, the applicant was actively involved in committing the said offence and he also apprised of the route, time etc. of the complainant, so that the plan can be executed. The prosecution alleged that the applicant kept himself updated about his movements and verified the information as regards the complainant given by one of the accused. The prosecution alleged that the present applicant and other accused followed the complainant on the blue and black colour avenger bike and while doing so, the applicant was continuously in touch with other accused persons calling fro his mobile No.96191 47161 and by updating the other co-accused about development.

After the incident took place, the accused persons gathered at a location and distributed the looted cash amongst themselves. It is alleged that the applicant received a sum of Rs.17,500/-. This cash amount received by the applicant was recovered from the co-accused Ishwar @ Dadya vide Memorandum Panchamama under Section 27 of the Indian Evidence Act. The prosecution has also established from the material in the charge-sheet that the place where the incident took place is the same where the mobile phone location of the Applicant is traced.

5] The CDR is obtained regarding various calls made by the applicant from his mobile number to other accused persons, calls received by him made by other accused persons prior to the date of incident. The prosecution, has, therefore, clearly relied upon the conspiracy that was hatched and the applicant being active participant in the entire episode.

6] The charge-sheet compiled statements of 23 witnesses which reflect role of the applicant as keenly involved in the commission of crime. After completion of investigation in the concerned CR, charge sheet came to be filed against 12 accused persons including the present applicant in the Sessions Court, Kalyan which was only under the provisions of Indian Penal Code. After filing of charge-sheet, the investigation revealed that Dhananjay Khandu Jadhav @ Bodyman is the gang leader and he in involved in series of offences in Thane and in all 11 offences are registered against him in various police stations in Thane. The investigation further revealed that there are two offences registered against the applicant and he was the member of the organized crime syndicate and fresh proposal was forwarded on 31.01.2017 to the Additional Commissioner of Police East region, Kalyan to invoke the provisions of MCOC Act against the accused persons.

7] Additional Commissioner of Police , East Region considered the provisions of MCOC and accorded necessary sanction under Section 23(1) of the MCOC Act on 16.05.2017 against the gang leader and other accused persons including the present applicant. The direction was given to the Additional Commissioner of Police, Ulhasnagar to carry out further investigation.

8] During the course of investigation, statements of accused persons came to be recorded and even statement of applicant was recorded through Deputy Commissioner of Police, Zone V where he would narrate the manner in which the crime was committed and how the booty was shared by the accused persons.

9] Statement of accused Mehul Wasita is also recorded. The cash received by the applicant which was recovered from co-accused is a circumstance which is put forth in the charge-sheet to establish the charge that he was part of the subject crime, when cash was looted from the complainant.

10] The learned counsel for the Applicant would submit that initially applicant was released on bail in the subject CR, but after the provisions of MCOC Act were invoked, accused persons were again arrested and now being tried for MCOC Act. Learned counsel for the applicant would submit that merely because statement of the applicant is recorded under Section 18, solely on the basis of said statement, conviction cannot be sustained in absence of any corroborative material.

11] Learned counsel for the applicant would submit that the applicant is entitled to be released on bail on two grounds, firstly, there is no prima-facie mens rea on the part of the applicant and secondly there is no material on record to demonstrate if released on bail, the applicant is likely to commit further offence.

12] The learned APP, however, vehemently opposed the application and submits that there is prima-facie evidence showing that the applicant is a member of organized crime syndicate and in past also there are two offences registered against him of similar nature, which prima facie indicate his culpability. The material in the charge-sheet according to the learned APP must lead to rejection of his application.

13] I have scanned the charge-sheet in order to ascertain whether it comprises any material from which one can record a prima facie finding regarding fulfilling of the criteria prescribed while considering the application by an accused for being released in the offence under MCOC Act.

From the Affidavit filed on record, it is seen that there are two offences registered against the applicant vide CR No.404/2014 for the offences under Sections 395, 397, 307 read with 34 of the Indian Penal

Code and under Section 3, 25(1)(A) and 27 of the Arms Act and under Section 37(1), 135 of the Bombay Police Act and CR No.60/2006 for the offences under Sections 395, 397 of the Indian Penal Code.

14] The charge sheet in CR No. 404/2014 is produced on record where the applicant is arraigned as accused No.2 and similar role is attributed to him when the complainant collected cash from the petrol pump and was enroute to Bank when the accused persons looted him of the amount by firing from one fire arm and the applicant was specifically assigned the task of tracking the complainant. In the charge-sheet of the said offence there is reference of two earlier convictions of the Applicant in CR No.36/1992 under Section 324, 114 of the Indian Penal Code, where he was convicted for four months and another CR No.181/1992, where he was convicted for six months.

15] In his confessional statement under Section 18, the applicant specifically admit that he alongwith gang leader and other co-accused snatched the bag from the complainant by assaulting him by knife and the amount was subsequently distributed and the applicant got share of Rs.45,000/-. In his memorandum panchanama under Section 27 of the Indian Evidence Act, he has stated that he is not in possession of the entire amount, as he expended the same. The co-accused Ishwar on his arrest, under the memorandum Panchanama led to the amount and from his house sum of Rs.17,500/- was seized.

16] Further, since the CDR also establish that the applicant was in touch with the co-accused before commission of crime and his location is the same which reveals that he was present nearby the spot where the alleged incident had taken place, there is sufficient material against the applicant to charge him under the provisions of MCOC Act as a member of organized crime syndicate. The application, therefore, deserves to be rejected.

17] It is further noted that the CR under the MCOC Act is registered in the year 2016 and the applicant initially was arrested in 2016, but released on bail and once again incarcerated in the offence under MCOC Act. The learned Special Judge conducting the trial is directed to conclude the trial within a period of one year from today.

18] With the aforesaid observations and directions, Application is rejected.

[BHARATI DANGRE, J]