IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1655 OF 2020

Mahendra Purshottam Kevat @ Bhaiyya	..	Appellant
Versus		
The State of Maharashtra	..	Respondent

Mr.Pankaj D. Kavle for the Applicant.
Mr.S.H. Yadav, APP for the State.
PSI Mahesh Kawale, AEC, Crime Branch present.

CORAM: BHARATI DANGRE, J.
DATED : 16th NOVEMBER, 2022

P.C:-

1 The applicant was arrested on 18/7/2018 in C.R.No.I-06/2018 registered with Kongaon police station. The said C.R initially invoked offences punishable u/s. 307, 385, 387, 452 read with section 34 and Section 120B and Section 201 of IPC along with criminal law amendment, u/s.37(1), 135 of the Bombay Police Act, Sections 3, 25 of the Arms Act and and 1(c) of Motor Vehicle Act.

2 The co-accused came to be arrested in the said C.R and was remanded initially, to police custody and subsequently, to judicial custody. It is on 28/5/2018, prior approval was accorded

for invoking the provisions of MCOCA and pursuant thereto, sanction was granted to invoke provisions of Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999. The arrested co-accused were shown to be again re-arrested and produced before the Special Judge, MCOC.

During the course of investigation as the name of the applicant surfaced, he came to be arrested on 18/7/2018, pursuant to the transfer warrant and was produced as per the MCOC Court. He came to be arraigned as accused no.7 and the charge-sheet allege that he is a member of the Organized Crime Syndicate, headed by gang leader Suresh Pujari. The case was then converted in MCOC Special Case No.15/2018.

3 Heard learned counsel for the applicant, who would vehemently submit that the material in the charge-sheet is prima facie insufficient to indict him for the offence punishable under MCOC Act and further it is also submitted that since he remain incarcerated for last four years, he deserve his release on bail.

With the able assistance of the learned counsel and the learned APP, I have perused the charge-sheet placed on record which accuse the applicant of being a Member of an Organized Crime Syndicate.

4 The prosecution case which can be discerned from the charge-sheet is, wanted accused Suresh Pujari, is the leader of an Organized Crime Syndicate and on 10/1/2018, an FIR was

lodged at the instance of the complainant who reported to the police that he is the owner of K.N.Park Hotel situated at Bhiwandi Kalyan Road, from where he and his partner Prakash Shetty conduct the business in partnership. On 16/10/2015, his partner received a call from International number, demanding ransom of Rs.25 lakhs, and pursuant to which, they reported the incident to Hill Line Police station. Since then, the complainant and his partner were receiving calls from unknown numbers which were not received by them. It is further alleged by him that on 10/1/2018, while he was in his native place, he received a call from the Manager of K.N. Park Hotel, informing him that two persons had fired in the hotel and a Banquet Manager had sustained an injury in her thigh and the two persons who had fired, had left a chit at the counter, where the name of Suresh Pujari is inscribed.

5 Investigation of the crime was transferred to Anti Extortion Cell, Crime Branch and on 19th and 20th January, the co-accused were arrested, and from the investigation, it was revealed that Suresh Pujari, the gang leader was demanding extortion money from the complainant and his partner from 2015 and since they had failed to satisfy his demand, they had caused firing in the hotel.

6 As far as the role of the applicant is concerned, the charge-sheet accuse him of receiving the two sim cards and the allegation is that while the applicant was lodged in Adharwadi

prison, Kalyan, co-accused Nitin Avghade, who was also a jail inmate of the applicant in another case, had received two sim cards from associate of Suresh Pujari and the said co-accused Nitin was in contact with the wanted accused from the jail. It is alleged that out of the two sim cards, one was retained by Nitin Avghade so as to enable him to establish contact with Suresh Pujari, whereas other was handed over to the present applicant and he was asked to hand over the same to one Sanket Dalvi, when the applicant would be produced in Kalyan Sessions Court for his case, and as directed, on his production before the Court, he handed over the sim card to Sanket Dalvi which was put to use to contact Suresh Pujari for implementing the conspiracy.

7 This is the only material compiled against the applicant in the entire charge-sheet, with Nitin Avghade being charged as accused no.8 and the applicant being charged as accused no.7. Pertinent to note that on Sanket Dalvi being arrested, sim card was recovered from him. The Memorandum Panchnama was executed at the instance of the applicant and he led to a spot where he delivered the sim card of Vodafone Company to Sanket Dalvi in the Court premises at Kalyan, where he received the amount sent by gangster Suresh Pujari. However, the sim card is reocvered from Sanket Dalvi on his arrest.

The confessional statement of the applicant as well as Sanket Dalvi recorded u/s.18 of the MCOC Act, forms the base rock of the prosecution case.

8 On the last date of hearing, I had asked the learned APP to ascertain whether on the date on which it is alleged that the applicant transferred the sim card to co-accused Sanket, whether the applicant was produced in the concerned Court. The roznama of the proceedings which form part of the charge-sheet, not supporting the fact that on the particular date when it is alleged that the sim card was transferred, he was required to be produced before the concerned Court.

The affidavit filed by the Superintendent Kalyan Jail, state that on 9/8/2017, the applicant was taken out of the prison for attending the Court proceedings at 12.10 hours and he reported back at around 3.05 p.m. The letter dated 30/7/2022 addressed by the Superintendent, Kalyan District Jail was taken on record. However, the roznama of the Court of the said date in the concerned proceedings dated 9/8/2017 record that accused nos.1, 3 5 and 6 are not produced by jail authorities, the applicant being arraigned as accused no.5 in Sessions Case No.190/2011.

I had, therefore, asked the Superintendent, Kalyan Jail to clarify the position and accordingly, an affidavit is filed on 11/11/2022 where the following statement is made:-

> " 2 I say that on 09.08.2017 the Applicant/Accused Mahendra Purshottam Kevat and co-accused Dattatraya Kashinath Gaikwad handed over to the Thane Police Headquarter, Thane City, Police Escort viz. Police Naik Shri A.R. Fal, buckle No.2229 and his signature obtained on the said register at 12.10 hours for attending

the Ld. Additional District and Sessions Court, Kalyan by the Police Squad. The entries are taken in the In-ward/Out-ward registered vide Register No.11 and the said Prisoners were admitted in the Kalyan District Prison at around 3.10 p.m. by the said Police Escort. I crave leave to rely upon the copy of the said register as and when required by this Hon'ble Court.

3 I say and submit that the letter dated 23.07.2022 issued by the office of ACP, Crime Branch, Thane received on the same day; wherein on 30.07.2022, Jail Authority replied that the Applicants/Accused Mahendra Purshottam Kevat and Dattatraya Kashinath Gaikwad handed over to the Police Escort viz. Police Naik Shri A.R. Fal, buckle No.2229 on dated 09.08.2017 for attending the Ld. Additional District and Sessions Court, Kalyan, the signature of the said Police Naik came to be obtained on the said register"

9 In the wake of the above, the case of the prosecution only hinges on one circumstance to establish that the applicant is the Member of the Organized Crime Syndicate, which is, that the applicant received the sim card from accused no.8 and it was then given by the applicant to the accused no.4, prima facie becomes doubtful. In order to establish that the applicant is a Member of the Organized Crime Syndicate, this is the only circumstance in the charge-sheet, which emerge as a weak circumstance, in light of the aforesaid discrepancy when the roznama of the Court proceedings record that the accused persons were not produced in the Court and the prosecution rely upon the Memorandum Panchnama at the instance of the present applicant, indicating

that it is in precints Kalyan Court, he handed over the sim card to the co-accused, when he was produced in other murder case.

Ultimately, this circumstance will have to be established before the Special Court and considering that this is a stand-alone circumstance and the fate of the applicant depends upon it being proved by the prosecution beyond reasonable doubt.

At present, I deem it appropriate to release the applicant on bail, considering the limited role attributed to him in the charge-sheet. It is stated that the applicant has two cases registered against him individually, one in the year 2008 and the other in 2011. However, the prosecution has failed to establish the commonality of the said crime with the gang leader Suresh Pujari and hence, the applicant deserve being released on bail.

10 The observations made above are *prima facie* in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

ORDER

(a) Application is allowed.

(b) Applicant – Mahendra Purshottam Kevat @ Bhaiyya shall be released on bail in connection with

C.R.No.I-06 of 2018 registered with Kongaon Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

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

(c) The applicant shall report to the concerned Police Station on first Saturday of every trimester between 3.00 p.m. to 5. 00 p.m.

(d) 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 and should not tamper with evidence.

(e) The Applicant shall regularly attend trial, on every date, unless exempted.

(f) Upon release, the Applicant shall furnish his contact numbers and permanent residential addresses to the Investigating Officer and shall keep him updated in case of change in the same.

(SMT. BHARATI DANGRE, J.)

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