

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 29 OF 2022

Nilesh Bansilal Ghaiwal

...Applicant

-Vs.-

The State of Maharashtra

...Respondent

Mr.Aabad Ponda, Senior Advocate i/by Karma Vivan, Adv. for the applicant.
Ms P. N. Dabholkar, APP for the State.

CORAM : SANDEEP K. SHINDE, J.

CLOSED ON : 17.11.2022

PRONOUNCED NO : 30.11.2022

P.C.

Heard Mr. Ponda, learned Sr. Advocate for the applicant and Ms P. N. Dabholkar, learned APP for the respondent-State.

2. The applicant seeks his enlargement on bail in connection with First Information Report ('FIR' for short) bearing Crime No.50 of 2021, dated 25th February, 2021, registered at Kothrud Police Station for the offences punishable under sections, 395, 412, 294(B), 109, 506(2), 504 of the Indian Penal Code along with section 37(1) read with section 135 of the

Maharashtra Police Act and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organize Crime Act, 1999 ('MCOC Act' for short).

3. The subject crime came to be registered on 25th February, 2021. On 5th March, 2021, prior approval under MCOC Act was granted. The applicant came to be arrested on 9th March, 2021. He was produced before the Special Judge designated under MCOC Act via production warrant. Investigation in the case is over. On 10th August, 2021, sanction has been accorded, whereupon the charge-sheet has been filed in MCOCA Case No.607 of 2021.

4. The prosecution case is as under :

Mr. Raj Chandrakant Kadam (informant) owns an automobile repairing shop/garage called 'Raj Auto'. On 9th September, 2019, his friend Akshay Thebe had borrowed Rs.40,000/- from him and in exchange had left Mahindra 550 Jeep bearing registration No.MH-12 JU 7344 (Jeep), which he told first informant, he had purchased for Rs.3,00,000/- from one Mayur Jadhav. On 10th September, 2019, at the instance of Santosh Dhumal, unknown persons came to the garage of the first informant and threatened him with chopper and forcibly took the jeep stating that same was to be used by the applicant for rallies. Later, CCTV footage revealed their identity. They were Kunal Kandhare, Musa Ilahi Shaikh, Akshay Gogawale, Vipur Mazir, all members of crime syndicate, of which applicant

was leader. First informant alleged that co-accused Santosh Dhumal called his friend Akshay Thebe and threatened him with dire consequences, if he complained to the Police. Akshay Thebe told first information that Santosh Dhumal had forcibly taken signature of Mayur Jadhav (owner of jeep) on transfer forms. On these revelations, the first informant was afraid and he did not report the incident, immediately. However, in January, 2021, when he heard on social media, about huge car rally held by gangster Gajanan Marne's supporters, after his release and the Police were looking out for the owners of such cars, he did complain.

5. Mr. Ponda, learned Sr. Advocate for the applicant would contend that there are reasonable grounds for believing that the applicant is not guilty of the said offences. Learned Sr. Advocate submitted that a false and concocted case had been slapped against the applicant, inasmuch on the date of the alleged incident, i.e. 9th September, 2019, the applicant was incarcerated in another offence and therefore, prosecution case is inconceivable. Mr. Ponda, Sr. Advocate submitted that the alleged incident had taken place in September, 2019 and the complaint was lodged nearly after 15-16 months without giving reasonable explanation for inordinate delay. Mr. Ponda would submit that entire case is false and motivated in order to keep the applicant behind bars and has been targeted by the respondent, on one pretext or the other. Mr. Ponda has taken me, through the charge-sheets, applicant's antecedents, orders passed by the this Court,

orders in externment and chapter proceedings. Mr. Ponda has invited my attention to order passed by this Court in an application filed by the first informant seeking to quash subject FIR; affidavit of first informant; to submit that first informant has disowned the complaint. He would submit that investigation is over and since trial is not likely to commence in near future, applicant may be granted bail, by imposing suitable conditions to secure his presence.

6. On the other hand Mrs. Dabholkar, would oppose the application, relying on the charge-sheet and in particular statement of Mr.M.R. Devkate, and Nivrutti Pawar, who had allegedly seen the applicant, drove the jeep to their hotel premises. Mrs.Dabholkar would rely on transcript of conversation between co-accused, which according to her discloses applicant's complicity. Mrs.Dabholkar would rely on affidavits to submit that applicant is gang leader, and co-accused are members of his gang. She would urge, having regard to nature of accusations, antecedents of the applicant and rigors of sections 22(4) of the MCOC Act, application deserves no consideration and it may be rejected.

7. It appears from the record that in the year 2017, a crime was registered against the applicant under section 395 of the Indian Penal Code and provisions of MCOC Act. In the said crime, the applicant was released on bail on 17th September, 2019, by this Court. In the said order, the Court had observed that applicant was acquitted in two MCOCA cases of the year

2003 and 2010 and further observed that merely because the applicant had antecedents, it cannot be a ground to reject the application. However, it appears on the very day, the applicant was put behind bars, as he was externed for a period of one month under section 144(2), which was further stayed by the Court. Thereafter, with immediate effect Chapter Proceedings were initiated against the applicant under section 110 of the Code of Criminal Procedure. Thereafter, on 27th July, 2020, externment proceedings were initiated against him under the Maharashtra Police Act, 1951. The said externment proceedings were set aside by the Divisional Commissioner, Pune on 9th November, 2020. Immediately, thereafter, Crime No.441 of 2020 was registered against the applicant on 13th December, 2020, wherein he was granted pre-arrest bail. It appears, on 2nd March, 2021, District Magistrate Pune issued an order of detention, whereby the applicant was once again taken into custody.

8. Insofar as the present case is concerned, the material in the charge-sheet show that Raj Chandrakant Kadam (first informant) filed an affidavit on 23rd October, 2021, in the Court of Special Judge Designated under MCOC Act, disowning the FIR. Whereafter, the first informant filed Criminal Application No.380 of 2021, seeking quashment of the FIR lodged by him. The said criminal application was heard by the Division Bench on 1st July, 2021. Having had to the nature of grievance of the first informant, the Division Bench directed the Commissioner of Police, Pune to look into

the grievance of the first informant and take appropriate decision therein within a period of four weeks. Pursuant thereto, a statement of first informant was recorded on 13th November, 2021, wherein he was completely disowned the alleged incident, stating complaint was lodged under duress. *Prima Facie* it rendered prosecution case indefinite.

9. The next aspect highlighted by Mr. Ponda, learned Sr. Advocate is that FIR has been lodged after a period of two long years and there is no satisfactory explanation given in relation as to why the said FIR was not lodged within reasonable time.

10. The explanation sought to be given by the first informant that he was afraid, because of threat given by Santosh Dhumal. However, in January, 2021 when he saw on social media, car rally held by supporters of Marne (another gangster), followed by action against the car owners, first informant was apprehensive that jeep which was allegedly taken away from him in September, 2019, if used in car rally, on release of applicant, he may land in trouble. *Prima facie* explanation does not appeal to this Court, for a simple reason that neither first informant nor his friend Akshay Thebe, was owner of the jeep in question.

11. To connect the applicant to the crime in question, the prosecution would rely on the statement of one Devkate recorded on 26th February, 2021, wherein he would state that the jeep in question was drove by the

applicant to his hotel premises at Rajuri Taluka Jamkhed two months before and it was used by him and his brother. However, six days before, some unknown persons took away the jeep in question from his custody. In my view, Devkate's statement is neither here nor there. *Prima facie* it does not further prosecution case.

12. Thus, barring the statement of Mr. Devkate and one Suresh Nivrutti Pawar, prima facie, there is no material to connect the applicant to the crime in question. Although the prosecution would also rely on the transcript of conversation dated 19th September, 2019, between Santosh Dhumal (who allegedly took the jeep forcibly from the custody of the first informant) and Akshay Thebe, in my view, that itself is not sufficient to connect the applicant to the crime in question. Insofar as the prosecution case that, the applicant is a gang leader of which Santosh Dhumal, Akshay Gogawale and others are the members of his gang; however, having regard to the facts of the case, merely because the applicant has antecedents, rigors of section 22(4) of MCOC Act would not dissuade the Court from granting bail to the applicant. Hence, the following order.

ORDER

- (1) The application is allowed.
- (2) The non-applicant Police Station Kothrud, Pune is directed to be

released applicant in Crime No.50 of 2021, registered at Kothrud Police Station, Pune for the offences punishable under sections, 395, 412, 294(B), 109, 506(2), 504 of the Indian Penal Code along with section 37(1) read with section 135 of the Maharashtra Police Act and sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, on executing P.R.Bond in the sum of Rs.1,00,000/- (Rs.One Lakh) with one or two solvent surety in the like amount.

- (3) The applicant shall report to the Investigating Officer twice a month i.e. 2nd and 4th Monday between 11.00 am to 1.00 pm till framing of charge and thereafter as and when his presence is required by the Court.
 - (4) The applicant shall deposit his Pass-port with the Investigating Officer within two weeks from his release from the jail.
 - (5) The applicant shall not tamper with the evidence of prosecution and shall not influence the witnesses.
13. In view of the above, the application stands disposed of.

(SANDEEP K. SHINDE, J)