

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.775 OF 2023
WITH APPLN/2325/2023**

Madan Gopal Kholwal

...Applicant

VERSUS

1. The State of Maharashtra

2. Superintendent of Police Jalna

...Respondents

...

Mr. A.B. Ghule, Advocate for the applicant.

Ms. V.N. Patil Jadhav, APP for the respondent-State.

Ms. Ashvini R. Mate, Advocate for the complainant/Assist to PP

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CORAM : S.G. MEHARE, J.

DATED : JULY 05, 2023

PER COURT:-

1. Heard learned counsel for the applicant, APP for the State, and counsel for the complainant.

2. The applicant is seeking bail in Crime No.248 of 2019, registered with Badnapur Police Station, District Jalna, for the offence punishable under Section 302, 307, 120-B of Indian Penal Code, Section 3(1)(i), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act') and Section 3/25 of Arms Act.

3. Briefly, the prosecution has a case that the deceased was a labour contractor. Some of the co-accused were interested in eliminating the deceased being a competitor as a labour contractor, so they may get the contracts of the deceased. Before the present

incident, the deceased was attacked, and the crime under Section 307 of the Indian Penal Code was registered against the accused, including the present applicant. Thereafter, they settled their dispute, but the deceased was eliminated a few days later. The applicant was a member of the crime syndicate. He always used to be with one Kalani, who was the leader of the crime syndicate. They were involved in organized crimes with the objective of getting pecuniary benefits or gaining undue economic or other advantages for themselves or any other person. It is a specific case of the prosecution that the deceased was eliminated to gain undue economic advantage and to support the two co-accused, who were interested in getting the labour contract. The prosecution has collected the evidence, particularly the statement of the co-accused under Section 18 of the MCOC Act and booked the applicant.

4. Learned counsel for the applicant would argue that the applicant has no concern with the so-called organized crime syndicate. He barely had acquaintance with the so-called leader of the said syndicate. He got acquainted with the said Kalani being a member of Karni Sena. The crimes were registered against him for social cause, and he has been acquitted of those crimes. He has been falsely implicated in the crime, only being acquainted with the said Kalani. He has not played any active role in the crime. Even in the earlier crimes, there was nothing against him. He is an agriculturist

and a social worker. Section 18 of the MCOC Act has not been strictly complied with. There is absolutely no evidence against the applicant to indicate that he has committed the crimes for the organized crime syndicate. The co-accused Sunil, who has played a similar role, has been granted bail. Hence, he deserves parity. Learned counsel for the applicant argued at length and tried to convince the Court that, in this case, there was no cogent and reliable evidence to believe that he was a member of the organized crime syndicate and had any interest in the economic benefit or was the beneficiary of the same. He would argue that the applicant has been languishing in jail since 2019. The applicant explained that he knew Mr. Kalani, but he was never involved in any alleged crimes. The trial is going on at a snail's speed. Therefore also, the applicant deserves bail.

5. Perused the charge sheet. It is not in dispute that the applicant is the co-accused in the crime registered on the report of the deceased before the present crime. The prosecution has a positive case of eliminating a labour contractor for gaining benefit from the co-accused. The prosecution case reveals that the co-accused, who were the labour supply contractors, hired the services of the organized crime syndicate led by one Mr. Kalani. *Prima facie*, the prosecution has the evidence that the applicant was well-versed with him.

6. The prosecution mainly relied on Section 18 of the MCOC Act. When the learned APP put into service Section 18 of the MCOC Act, learned counsel for the applicant vehemently argued that neither the confession was recorded as prescribed under sub-section (1) of Section 18 nor sent to the Magistrate nor the person from whom the confession was recorded was produced before the Chief Judicial Magistrate. Therefore, the statement of the co-accused is receivable in evidence as per Section 18, was not in strict compliance with the said section.

7. Section 18 pertains to the confessions made to the police officer by an accused in the crime. It has to be taken into consideration, and it is made admissible in the trial. After having gone through the papers, the learned APP could succeed in satisfying the Court that sub-section (4), (5) and (6) of Section 18 have been complied with. The order of the Magistrate on the application of the prosecution for supplying the statement of the co-accused recorded under Section 18(6) of the said Act has been referred to. As per the said order, the confession was sent to the Special Court. Learned counsel for the applicant complained that such statements were not part of the charge sheet. This seems to be learnt for the first time to him also. He has a right to ask for such confession before the trial Court by way of an appropriate application. Be that as it may, the fact remains that the co-accused had confessed before the police officer as

provided under Section 18 of the MCOC Act, and it has been strictly complied with. So at this juncture, its admissibility cannot be denied, or it cannot be decided whether it was admissible or inadmissible. While considering the bail, the Court has limited scope. Rather it is not the jurisdiction of the bail Court to evaluate the evidential value of such a statement. That statement goes against the applicant.

8. As far as parity is concerned, co-accused Sunil has been granted bail. The order granting him bail is placed before the Court. However, that order did not comment on Section 18 of MCOC Act. The law point has been raised before the Court, and the learned APP satisfied the Court that the confessional statement of the co-accused under Section 18 is admissible, and that is the *prima facie* material against the applicant showing his involvement in the crime. Therefore, the learned APP and the counsel for the complainant are correct that the applicant cannot claim parity though the co-accused has been granted bail.

9. The overall view of the facts and material placed on record reveals that the applicant was a member of the organized crime syndicate and involved in unlawful activities to gain pecuniary benefits or undue economic advantage for himself or the co-accused. Therefore, the applicant does not deserve bail.

10. For the above reasons, the application stands dismissed.

11. Needless to say that the observations are restricted to the bail application only.

12. Criminal Application No.2325 of 2023 is allowed.

(S.G. MEHARE, J.)