IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 565 OF 2023

ZAHID NISSAR AHMED SHAIKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Sudeep Pasbola a/w Adv. Pranav Gole a/w Adv. Sankalp Vichare a/w Adv. Adesh Kale i/b Adv. Ayush Pasbola for the Applicant.

Mr. N. B. Patil, APP for the State.

PSI Deepak Uttam Kumbhar, Waliv Police Station.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 18, 2023

P.C. :

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

2. This is an application for bail in respect of the offence punishable under Sections 395, 397, 212, 120-B of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act', for short) registered on 04/01/2022 vide C.R. No.15 of 2022 with Valiv Police Station.

3. The date of the alleged incident is 03/01/2022. The applicant is accused No. 6. There are in all 6 accused. Accused No.3 is the gang leader. It is the prosecution's case that on getting the information that the informant would be carrying cash of Rs.14,90,000/-, the accused persons stopped the vehicle in which the informant was travelling. The informant was assaulted and the accused persons fled with the cash of Rs.14,90,000/-. The applicant was arrested on 09/01/2022.

4. Learned APP opposed the application. So far as the materials against the applicant are concerned, an amount of Rs.59,000/- was recovered from the applicant. The test identification parade was conducted in which the applicant was identified. According to the learned counsel for the applicant, there was a delay in conducting the test identification parade. Learned APP pointed out a confessional statement recorded under Section 18 of the MCOC Act of Shrikant Laxman Gopan discloses that the applicant was actively involved in the commission of the offence.

5. Accused Nos. 5 and the present applicant are residents of Maharashtra and all the other accused are from Rajasthan. There is a commonality chart at page No. 69 of the paperbook. It reveals that the present offence is the only offence committed by the applicant in common with the other members of the syndicate. There are no criminal antecedents reported against the applicant. The applicant is in custody for a period of more than 1 year and 9 months and the trial is likely to take a long time to conclude. The applicant will face the consequences of trial if found guilty.

6. 'Organised crime' is defined under Section 2(e) of the MCOC Act which reads thus:-

> "(e) 'organised crime' means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;"

'Organised crime syndicate' is defined under Section 2(f) of the MCOC Act which reads thus:-

> "(f) 'organised crime syndicate' means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime;"

7. The contention of the learned counsel for the applicant is that this is the first offence committed by the applicant and is the only offence registered against the applicant where he is shown as an accused alongwith other accused who are said to be members of the organised crime syndicate. According to the learned counsel, the question will be whether the applicant in such a situation can be said to be aware that he has committed the offence as a member of the organised crime syndicate. In the facts and circumstances of the present case, also considering that the applicant is incarcerated for 21 months with no possibility of trial commencing and concluding anytime soon, I am of the opinion that the rigours of Section 21(4) of the MCOC Act can be overcome. As there are no criminal antecedents reported, it is unlikely that the applicant would commit any offence while on bail. However, in any case, I am inclined to impose stringent conditions while enlarging the applicant on bail. Hence, the following order :-

O R D E R

(a) The application is allowed.

(b) The applicant- Zahid Nissar Ahmed Shaikh in connection with C.R. No. 15 of 2022 registered with Valiv Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Valiv police station twice a month, every first and third Monday of the month, between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)