

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1901 OF 2022

VINA
ARVIND
KHADPE
Digitally
signed by
VINA
ARVIND
KHADPE
Date:
2023.12.05
18:46:31
+0530

Rakesh Rajdev Jaiswal

....Applicant

Versus

The State of Maharashtra

....Respondent

Mr. Darshit Jain for the Applicant.

Mr. A. A. Palkar, APP for the Respondent – State.

ACP Gadekar and PSI Gaikwad present.

CORAM : G. A. SANAP, J.

DATE : 5th DECEMBER, 2023.

P.C. :

1. The Applicant / accused no.4 has made this Application for bail in Crime No.70 of 2019 for the offences punishable under Sections 395, 397, 412, 341, 201, 120B of the Indian Penal Code, 1860, Section 4 read with Section 25 of the Arms Act, 1959, Sections 3(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, MCOC Act), and Section 37(1)(a) read with 135 of the Maharashtra Police Act, 1951 registered with

Kalachowky Police Station, Mumbai.

2. I have heard learned advocate for the applicant and learned APP for the respondent-State. Perused Record and Proceedings.

3. Learned advocate for the applicant / accused no.4 submitted that he has no criminal antecedents. Learned advocate submitted that there is no commonality of the offence with either the gang leader or the other accused involved in this crime and therefore the rigour of section 21(4) of the MCOC Act would not be applicable for accused no.4. Learned advocate submitted that the role attributed to accused no.4 in the whole episode if considered, it would *prima facie* indicate that he was neither conspirator or abettor in the commission of the crime. Learned advocate submitted that he could be at most held responsible for fabrication of documents for obtaining SIM cards. Learned advocate submitted that merely because of use of SIM cards obtained by co-accused accused from accused no. 4 on the basis of the fraudulent documents, he cannot be said to be abettor or conspirator. Learned advocate submitted that three accused persons in this crime attributed with more serious role than the one attributed to accused no.4 have been released on bail and therefore the ground of parity is

available to this accused. Learned advocate submitted that this accused is therefore entitled to get bail. It is submitted that this accused is ready to abide by the conditions that may be imposed by this Court.

4. Learned APP submitted that accused no.4 on the basis of the forged documents obtained SIM Cards and these SIM cards were used by the prime accused for the purpose of commission of offence. Learned APP further submitted that by using these SIM cards, the surveillance was kept on the informant and the same led to commission of main crime. Learned APP submitted that at this stage, the provisions of Sections 21(4) of the MCOC Act needs to be applied and by doing so, accused No.4 cannot be granted bail.

5. In order to appreciate the rival submissions, I have perused the record and proceedings. It is seen that out of nine accused, one accused has been discharged and three accused have been granted bail. The copies of the bail orders are part of the record. Perusal of these orders is necessary to compare the role played by accused no.4 and other accused. It is not the case of the prosecution that accused no.4 was present on the spot. The role attributed to him is that he provided SIM cards to the main accused and those SIM cards were used by those accused for commission of

crime. It is further the case of the prosecution that for the purpose of obtaining SIM cards, accused no.4 used forged documents. In my view, the case of the prosecution against accused no.4 cannot be ignored for deciding the bail application.

6. Accused no.4 has no criminal antecedents. This is the first crime registered against him under the MCOC Act. It is therefore proper to compare the commonality of offences with the gang leader and co-accused. As far as, this accused no.4 is concerned, for the purpose of deciding the applicability of section 21(4) of the MCOC Act, the role attributed to this accused and whether it is supported by the material needs to be considered *prima facie*. The Court is required to consider whether the act attributed to accused no.4 really constitute abetment or not. On consideration of materials placed on record, it *prima facie* appears that the provisions of Section 21(4) of MCOC Act would not come in the way of accused no.4. In the case of accused no.4, by invoking rigour of Section 21(4) of MCOC Act, the bail cannot be denied to accused no.4.

7. Accused no.4 has been languishing in jail since 4 & 1/2 years. The accused persons attributed with same or serious role have been released on bail. Accused no.4, in my view, therefore is

justified in pressing the ground of parity. Accused no.4 in my view, is therefore entitled to get bail. The appreciation put-forth by the learned APP can be taken care by imposing appropriate conditions. The suitable and appropriate conditions can completely eliminate the apprehension. Accordingly, I proceed to pass the following order:

ORDER

- (i) Applicant/accused no.4 - Rakesh Rajdev Jaiswal is directed to be released on bail in n Crime No.70 of 2019 for the offence punishable under Sections 395, 397, 412, 341, 201, 120B of the Indian Penal Code, 1860, Section 4 read with Section 25 of the Arms Act, 1959, Sections 3(ii) 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, MCOC Act), and Section 37(1)(a) read with 135 of the Maharashtra Police Act, 1951, registered with Kalachowky Police Station, Mumbai, on executing PR Bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (ii) The applicant shall furnish his residential address as well as permanent address and contact details to the investigating officer within seven days from his release from jail;
- (iii) The applicant shall report to the investigating officer, twice a month i.e. 1st and 4th Monday of each month between 11:00 am to 01:00 pm, commencing from

January 2024, till the charge is framed;

- (iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

8. Application is allowed and disposed of.

9. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

[G. A. SANAP, J.]