IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3203 OF 2021

Nadeem Abdul Sattar Lakdawala ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
BAIL APPLICATION NO.3332 OF 2021

Nadeem Abdul Sattar Lakdawala ...Applicant
Versus
The State of Maharashtra ...Respondent

…

Mr. Sayaji D. Nangre with Mr. Mohammad Ayub Shaikh with Ms Esha S. Nangre for the Applicant in both matters.
Mr. Abhishekh Patil for the Intervenor.
Ms A.A. Takalkar APP for the Respondent-State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

ORDER PRONOUNCED ON : 21/07/2023.

ORAL ORDER :-

1. The Applicant seeks bail in DCB CID Crime No.5 of 2020 and DCB CID Crime No.23 of 2019 for offences punishable under Sections 387 and 120B of the IPC and Sections 3(1) (ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act).

2. The First Informant in Bail Application No.3203 of 2021 is a builder. It is alleged that between 14/09/2019 till 03/01/2020 the First Informant had received several international calls and threatening messages from the co-accused Ejaz Lakdawala, the gang leader, for extortion of money. Pursuant to the FIR lodged by the First Informant at Bandra Police Station, Crime No.24 of 2020 came to be registered for offence under Section 387 r/w 34 of the IPC. The crime was subsequently investigated by Anti Extortion Cell, DCB, CID under Crime No.5 of 2020.

3. The First Informant in Bail Application No.3332 of 2021 is a partner of M/s. Hicons Developers, engaged in construction activity. It is alleged that from 5/12/2018 till 27/02/2019 the First Informant received threatening calls from the co-accused-Ejaz Lakdawala demanding an extortion amount of Rs.50,00,000/-. Based on the First Information Report, Crime No.117 of 2019 came to be registered at Khar Police Station for offence under Section 387 r/w 34 of the Indian Penal Code. Subsequently, the investigation was transferred to DCB CID and registered as Crime No.23 of 2019.

4. Shifa @ Sonia, the daughter of the co-accused-Ejaz

Lakdawala, was arrested on 06/01/2020 in DCB Crime No.235 of 2019. Based on the information given by her, Ejaz Lakdawala, wanted accused in the said crime came to be arrested at Patna on 08/01/2020. He was taken into custody in DCB CID Crime No.15 of 2020 and in the course of the investigation his statement under Section 18 of the MCOC Act came to be recorded. The confessional statement of the co-accused Ejaz Lakdawala revealed that the Applicant herein had settled the matter in Crime No.23 of 2019 for Rs.10,00,000/- and that the Applicant had also provided information relating to the First Informant in Crime No.5 of 2020 to the co-accused Ejaz Lakdawala, pursuant to which calls were made for extortion of money. Accordingly, the Applicant was shown as a wanted accused in the said crime and he was taken into custody on 29/02/2020 at Mumbai Airport on his return trip from Jedda to Mumbai.

5. The statements of the other witnesses revealed that they too had received phone calls from Ejaz Lakdawala for extortion of money. The investigating Officer was of the opinion that Ejaz Lakdawala is a gang leader of an organized crime syndicate against whom several cases are pending trial for offences under Section 387 of the IPC and under the provisions of the MCOC Act. The allegations

against the Applicant are that he had abetted commission of the crime. Hence, a proposal was sent to invoke offences punishable under the MCOC Act, which was duly approved by the Competent Authority. Accordingly, offences under the MCOC Act came to be added. The investigation followed and the Competent Authority accorded sanction for prosecution under the MCOC Act. Upon completion of the investigation charge-sheets came to be filed against the Applicant and the others for the offences as stated above.

6. The bail applications filed before the learned Special Judge came to be dismissed mainly on the ground that the co-accused is a gang leader involved in continuing unlawful activity by use of violence or threat of violence, with an objective of gaining pecuniary benefit. Learned Judge observed that the confessional statement of the co-accused, the statements of the witnesses coupled with the fact that the Applicant had in fact visited Dubai, prima facie supports the case of the prosecution that the Applicant had abetted the crime within the meaning of Section 2(1) (a) of the MCOC Act. Being aggrieved by the dismissal of the bail applications, the Applicant has filed these applications.

7. Mr. Sayaji Nangre, learned counsel for the Applicant submits that there is no prima facie material to show the complicity of the Applicant in the alleged crime. It is submitted that in the preceding 10 years only one charge-sheet has been filed against the Applicant and hence essential ingredients of continuing unlawful activity within the meaning of Section 2(1)(d) are not made out.

8. He submits that the Applicant was not named in the FIR and has been implicated solely on the basis of retracted confessional statement of the co-accused-Ejaz Lakdawala recorded in another crime. He submits that there is no other material to indicate that the Applicant was a member of any crime syndicate, that he has acted on behalf of organized crime syndicate or that he is involved in any continued unlawful activity. Reliance is placed on the decision of the Hon'ble Supreme Court in ***Mohamad Iliyas Mohamad Bilal Kapadia vs. The State of Gujaratm*** in ***Special Leave to Appeal (Crl.) No.1815/2022, State of Maharashtra Vs. Kamal Ahmed Mohammed Vakil Ansari and Ors. AIR 2013 SCC 1441, Prasad Shrikant Purohit vs. State of Maharashtra, 2015 ALL MR (Cri) 2853 (S.C.), Pancho vs. State of Haryana , 2012 Cri L.J.832,*** decisions of this Court in ***Hemant Dhirajlal Banker Vs. State of Maharashtra,*** in ***Criminal Application***

No.488 of 2020, Ganesh Mohan Vishwakarma vs. The State of Maharashtra, in ***Bail Application No.1192 of 2021, Vivek Chandrakant Manjrekar vs. The State of Maharashtra,*** in ***Bail Application No.868 of 2022*** and ***Tananaji Narayan Sathe vs. State of Maharashtra 2019 ALL MR (Cri) 3773.***

9. Per contra, Ms A.A. Takalkar, learned APP submits that the confessional statement of the co-accused recorded under Section 18 of the MCOC Act prima facie proves that the Applicant has abetted commission of an organised crime by divulging information of the First Informant to the gang leader-Ejaz Lakdawala, who made several international calls and sent threatening messages to the First Informant for extortion of money. She submits that the material on record prima facie shows the complicity of the Applicant in the subject crime. Reliance is placed on decisions of the Apex Court in ***Zakir Abdul Mirajkar vs. State of Maharashtra and Ors., 2022 ALL MR (Cri. 3798 (S.C.), State of Maharashtra Vs. Bharat Shanti Lal Shah and Ors. 2008 AIR SCW 6431, State of Maharashtra vs. Vishwanath Maranna Shetty, 2012 ALL MR (Cri) 4095(S.C.),*** decisions of this Court in ***Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 ALL MR (Cri) 1903, Sachin Bansilal Ghailwal Vs. State of Maharashtra, 2015 ALL MR (Cri)***

525 , and ***Vivek Chandrakant Manjrekar Vs. State of Maharashtra & Ors. Cri. Bail Application No.868 of 2022.***

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The question for prima facie consideration is whether the Applicant is a member of an organised crime syndicate and whether he has abetted commission of an organised crime.

11. At the outset it may be mentioned that the fact that only one charge-sheet has been filed against the Applicant in preceding 10 years would not per se lead to an inference that the Applicant is not involved in continuing unlawful activity. In ***Zakir Abdul Mirajkar*** (supra) the Apex Court referred to the decision of this Court in ***Govind Sakharam Ubhe vs. State of Maharashtra, 2009 SCC Online BOM 770*** and reiterated that persons who are alleged to be the members of an organised crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. Rather charge-sheets with respect to the organised crime syndicate are sufficient to fulfill the condition in Section 2(1)(d) of the MCOC Act. The link with the organised crime syndicate is the crux of the term "continuing unlawful

activity". If this link is not established, that person cannot be roped in.

12. In the instant case, the records prima facie reveal that the co-accused Ejaz Lakdawala alleged to be the gang leader of an organised crime syndicate had made several international calls and sent threatening messages to the First Informant demanding extortion money. It is not in dispute that Ejaz Lakdawala, is facing trial in over 30 cases, which include cases for offences under Section 387 of the IPC and the MCOC Act. It is the case of the prosecution that the Applicant has close nexus with the organised crime syndicate. He has close association with Ejaz Lakdawala and was instrumental in reducing the extortion amount from 50 lakhs to 10 lakhs and further in divulging the detailed information of the First Informant in Crime No.23 of 2019. The said link is sought to be established relying upon the retracted confession of the co-accused - Ejaz Lakdawala.

13. The question relating to the evidentiary value of the retracted confession of a co-accused has been reiterated by the Apex Court in ***Pancho*** (supra) as under:-

> *"15. The law on this point is well settled by catena of judgments of this court. We may, however, refer to only two judgments to which our attention is drawn*

by Mr. Lalit, learned senior counsel. In Kashimira Singh v. The State of Madhya Pradesh, AIR 1952 SC 159 referring to the judgment of the Privy Council in Bhuboni Sahu v. The King, 76 Indian Appeals 147, and observations of Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chukerbutty, 38 Cal.559, this court observed that proper way to approach a case involving confession of a co-accused is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then it is not necessary to call the confession in aid. This court further noted that cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept.

16. In Haricharan Kurmi v. State Bihar, AIR 1964 SC 1184, the Constitution Bench of this court was again considering the same question. The Constitution Bench referred to Section 3 of the Evidence Act and observed that confession of a co- accused is not *evidence within the meaning of Section 3 of the Evidence Act. It is neither oral statement which the court permits or requires to be made before it as per Section 3(1) of the Evidence Act nor does it fall in the category of evidence referred to in Section 3(2) of the Evidence Act which covers all documents produced for the inspection of the court. This court observed that even then Section 30 provides that a confession may be taken into consideration not only against its maker, but also against a co-accused. Thus, though such a confession may not be evidence as strictly defined by Section 3 of the Evidence Act, it is an element which may be taken into consideration by the criminal court and in that sense, it may be described as evidence in a non-technical way. This court further observed that Section 30 merely enables the court to take the confession into account. It is, not obligatory on the court to take the confession into account. This court reiterated that a confession cannot be treated as substantive evidence against a co-accused. Where the prosecution relies upon the confession of one accused against another, the proper approach is to consider the other evidence against such an accused and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused, the court turns to the confession with a view to assuring itself that the conclusion which it is inclined to draw from* *the other evidence is right. This Court clarified that though confession may be regarded as evidence in generic sense because of the provisions of Section 30 of the Evidence, the fact remains that it is not evidence as defined in Section 3 of the Evidence Act. Therefore, in dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence."*

14. In the instant case, apart from the confessional statement, the prosecution has sought to rely upon the passport entry of the Applicant and the statement of the First Informant -Vasaivala to contend that the Applicant had visited Dubai during the period from 16/12/2020 to 19/12/2020. The records reveal that First Informant-Vasaivala and the Applicant herein are the partners of Hicon Developers Pvt. Ltd. The First Informant claims that he had received threatening calls from the co-accused- Ejaz Lakdawala demanding an amount of Rs.50 lakhs. In his supplementary statement, he has stated

that he had informed the Applicant about the threatening calls. He claims that the Applicant had received one of such calls and pleaded with the co-accused-Ejaz Lakdawala that the firm was facing financial crisis and hence they were not in a position to make the payment as demanded. This statement prima facie negates the contention that the Applicant had assisted or aided an organised crime syndicate headed by the co-accused - Ejaz Lakdawala.

15. In the supplementary statement, the First Informant-Vasaivala has stated that on 16/12/2018 he and the Applicant had travelled to Dubai and had stayed in the same hotel. The First Informant returned to Mumbai on 18/12/2018 whereas the Applicant returned on 19/12/2018. The Applicant allegedly informed the First Informant that he had contacted the co-accused- Ejaz Lakdawala regarding the demand for extortion amount. The Applicant informed him that the co-accused would not relent and demanded minimum amount of Rs.10 lakhs. It is pertinent to note that the evidence of the First Informant-Vasaiwala has been recorded and he has not supported the case of the prosecution that the Applicant herein had contacted the co-accused-Ejaz Lakdawala and reduced the amount to Rs.10 lakhs.

16. Apart from the retracted confessional statement made by the co-accused, there is no prima facie material to indicate that the Applicant herein had divulged information about the First Informant to the co-accused -Ejaz Lakdawala. The First Informant-Khalid Vasaiwala had not named the Applicant in the First Information Report, but had named him subsequently in the supplementary statement. The First Informant as well as some of the witnesses have implicated the Applicant only on the basis of suspicion. Suffice it to say that the Applicant, who is in custody since 2020 cannot be detained any further only on the basis of suspicion. Since the prosecution has prima facie failed to establish nexus of the Applicant either with any of the accused, who is a member of the “organised crime syndicate” or with the offence in the nature of an “organised crime”, the bar under Section 21(4) (b) of the MCOC Act is not attracted.

17. Considering the facts and circumstances of the case, in my considered view this is a fit case to exercise discretion of bail in favour of the Applicant. Hence, the following order:-

(i) The Applicant, who is arrested in DCB CID Crime No.5 of 2020 and DCB CID Crime No.23 of 2019, is ordered to be released on cash bail in each of the crimes for a period of six weeks;

(ii) The Applicant shall within the said period of six weeks execute PR bonds in the sum of Rs.50,000/- in each of the crimes with one or two solvent sureties to the like amount;

(iii) The Applicant shall report to the concerned police station once in three months on the first Monday of the month, between 11.00 a.m. to 2.00 p.m.;

(iv) The Applicant shall surrender his passport to the Investigating Officer;

(v) The Applicant shall not leave India without prior permission of the Court.

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

(vii) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

(viii) The Applicant shall keep the Investigating Officer /Trial Court informed of his current addresses and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

18. The Bail Applications stand disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)