

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 2520 OF 2022

Vikas @ Lalya @ Kanifnath Anil
Jadhav

...Applicant

vs.

The State of Maharashtra

...Respondent

**ALONGWITH
BAIL APPLICATION NO. 106 OF 2023**

Himalaya Satish Dhaigude

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Shailesh Chavan - Advocate for the Applicant in BA 2520 of 2022.

Mr. Rahul Dhaigude – Advocate for the Applicant in BA 106 of 2023

Mr. H. J. Dedhia – APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 28th APRIL, 2023

P. C. :-

1. Heard learned Advocate Shri Dhaigude for the Applicant-Himalaya in Bail Application No. 106 of 2023 and learned Advocate Shri Chavan for the Applicant-Vikas in Bail Application No. 2520 of 2022 and learned APP Shri Dedhia for the Respondent-State.

2. Both the learned Advocates submitted that their clients

are entitled to release on bail on two grounds:- One is the provisions of the Maharashtra Control of Organized Crime Act (in short, “MCOC Act”) are wrongly invoked and in fact the ingredients are not satisfied and second on the ground of merits of the matter that is to say that the materials collected in the present offence are not sufficient enough to detain them. According to them, for these reasons the bar under Section 21 of the MCOC Act needs to be lifted.

3. Whereas learned APP submitted that there are sufficient materials to prove involvement of these Applicants in the present F.I.R., so also he submitted that the materials collected are sufficient enough to connect them to the Organized Crime Syndicate, headed by the accused no. 1.

Facts

4. The provisions of the MCOC Act are invoked to an offence registered at Police Station Wathar, District Satara. It was registered under Section 394 read with 34 of the Indian Penal Code on the complaint of one Pallavi Mane. When she alongwith her husband were going to Shani temple to take Shani darshan and after taking Shani darshan they were going to Kedareshwar temple, on 25/02/2021 at about 12.30 p.m., they were intercepted by three

unknown persons. Out of them, one person was standing near red colour pulsar motor cycle. He was of fair complexion and ranging in between 30 to 32 years age group. Whereas two other persons were standing on the road thereby holding stones in their hand. Out of them one person asked them to part away the ornaments, cash amount and mobile. So they were forced to part away those articles. Its cost of Rs. 2,51,000/-. After that all of them ran away.

5. During investigation three accused persons were arrested. The present Applicant-Vikas is accused no. 2 and Applicant Himalaya is accused no. 3, whereas accused No. 1 is a gang leader according to the prosecution. Both these Applicants came to be arrested on 09/03/2021 and it was disclosed that it is an act of Organized Crime Syndicate and provisions of the MCOC Act were invoked and after completing the procedure, final charge-sheet was filed for the offence punishable under Section 394 read with 34 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4), 3(5) of the MCOC Act.

6. In both these matters, affidavit-in-reply are filed. My attention is invited to the same. Materials against Applicant-Vikas:-

(a) He is being identified by the first informant and her

husband in the parade held on 23/03/2021.

- (b) Cash amount of Rs. 11,500/- was received by the Applicant from the accused no. 1 and it was the amount raised after selling the robbed ornaments by accused no. 1. This amount was paid by the Applicant-Vikas to witness and he has produced it.
- (c) An amount of Rs. 35,000/- produced by the Patpedhi Secretary and this amount was paid to the Patpedhi by this Applicant towards refund of the loan taken by his father and prosecution claims that this is an amount which came to the share of the Applicant from selling the robbed ornaments.
- (d) To support the invocation of the MCOC Act, there is a reference of two offences registered against the present Applicant. He is acquitted in one offence and another offence is under investigation.

Submission of Mr. Chavan

7. Learned Advocate Shri Chavan submitted that so far as recovery of the cash amount is concerned there is only allegations and there are no supporting documents to show that the amount is received by the Applicant either from the accused no. 1 or otherwise by selling the robbed ornaments.

8. In order to buttress the submission that the provisions of the MCOC Act cannot be invoked against him, he relied upon the

judgment in case of :-

- a) Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat¹
- b) Dinesh Bhondulal Baisware Vs. State of Maharashtra² and
- c) Prasad Shrikant Purohit Vs. State of Maharashtra and Anr.³.

Materials against Himalaya

9. Whereas the following materials are referred in the affidavit, so as to oppose the bail for the Applicant-Himalaya. They are as follows:-

- (i) He is being identified by the first informant and by her husband in the parade conducted on 23/02/2021.
- (ii) Recovery of the red colour motor cycle though not a pulsar at the instance of this Applicant.
- (iii) Recovery of another motor cycle though it is not involved in the present offence but it is a stolen property in another offence.

10. In order to support the invocation of the MCOC Act, there is a reliance placed on in all eight offences of similar types

1 2022 Live Law (SC) 538

2 2016 (4) Bom. C.R. (Cri.) 149

3 2015 (7) Supreme Court Cases 440

against him individually. (Para no. 21, page nos. 426 and 427) and registration of two offences jointly with the head of Syndicate at page no. 428.

Submission of Mr. Dhaigude

11. Learned Advocate Shri Dhaigude submitted that so far as materials placed against his client i.e. Applicant-Himalaya, are not sufficient and there are serious lacunaes in those materials. According to him, they are as follows :-

- a) In F.I.R. the first informant has referred specifically red colour pulsar motor cycle, but at the instance of his client pulsar motor cycle is not seized.
- b) The age group of the robbers given by the first informant is in between 30 to 32 years and admittedly, the present Applicant does not fall within that age group.

12. There are serious lacunaes in conducting identification parade. They are as follows:-

- a) It is requirement of the Rules as per the Criminal Manual that dummy must be of similar description as that of the accused but it has not happened in this case.
- b) In one parade, accused No. 1 and Applicant-

Himalaya were asked to stand and it is against the clause nos. (h) and (i) of the Rules as per the Criminal Manual.

c) The age of the Applicant-Himalaya is 22 as per arrest panchnama, at page no. 140, whereas his age in the identification panchnama is mentioned as 21, at page no. 148.

d) As per the Rules, if two suspects are supposed to stand in the parade, they must be of similar description and according to him, their description is different, as reflected from arrest panchnama at page nos. 137 and 140.

13. Now the Applicant-Himalaya has changed his mind and now he has passed out 12th standard examination from the jail. The relevant documents is on page no. 408.

14. To support the contention that provisions of the MCOC Act are wrongly invoked, he relied upon the following judgments:-

- (i) *Girish Kumaran Nayar Vs. The State of Maharashtra*, in Bail Application No. 2241 of 2018, decided on 17th February, 2021 by this Court, (specifically para no. 9)
- (ii) *Mangesh Kailas Patil Vs. The State of Maharashtra*, in Bail Application No. 1550 of 2020, decided on 20th December, 2021 (specifically para no. 15).

15. Whereas according to the learned APP the contention raised on the behalf of the Applicant about wrong invocation of the MCOC Act is not correct. To buttress his submission, he relied upon observations made by the Hon'ble Supreme Court in the case of Kavitha Lankesh Vs. State of Karnataka⁴ and more specifically para no. 24. By way of reply, learned Advocate Shri Dhaigude submitted that the observations in the said matter are not given in a bail application but they are made when the grant of sanction is questioned, he invited my attention to para no. 29.

Consideration

16. It is true that the meaning of the word 'Organized Crime' and 'continuing unlawful activity' are given under Section 2 of the MCOC Act. It is true that the Section 3 of the said Act lays down various offences. So law expects that there should be two previous charge-sheets within a period of 10 years involving punishment upto three years.

17. On perusal of judgments of this Court as well as the Hon'ble Supreme Court these terms are clarified. It is also true that

4 AIR 2021 SC 5113

the head of the Organized Crime Syndicate takes help of the various persons when he undertakes particular activity, that is why it has been observed that it is not the requirement that in all previous charge-sheet and the present charge-sheet, the persons involved should be the same. However what is requirement is that the present offence must be outcome of the Organized Crime Syndicate.

18. In the judgment, which are cited before me are on the basis of the facts of those cases. So to say, in case of Mohamad Iliyas Mohamad Bilal Kapadiya (supra), there was only one charge-sheet in respect of activity which was undertaken by the Applicant as a member of the Organized Crime Syndicate. This was consideration for grant of bail under the provisions of the Gujarat Control of Terrorism and Organized Crime Act, 2015.

19. Whereas in case of Girish Kumaran Nayar (supra), learned Single Judge of this Court has also granted bail to the Applicant. It is observed that there has to be nexus in between the past crimes at the credit of the Applicant and the present crime, and if it is not shown then the nexus is not proved (para no. 13).

20. Whereas in case of Dinesh Bhondulal Baisware (supra) observations are of the similar line. If the charge-sheet is filed

against a particular Applicant, whereas they were characterized by individuality. Therefore, it cannot be said that present crime is outcome of the Organized Crime Syndicate.

21. Whereas in case of Prasad Shrikant Purohit (Supra), the Hon'ble Supreme Court after considering the materials has observed that Appellant No. 7 was having every nexus with previous three crimes, whereas other Appellants are concerned, there are no nexus with the previous crime. (para no. 95)

22. Whereas in case of Mangesh Manik Kanchan(Supra), there is also emphasize on a link in between the past offence and the present offence. That is why it is observed that past of a criminal cannot be linked always with his future when he has not committed any offence in the present (para no. 16).

23. It is true that the Hon'ble Supreme Court in case of Kavitha Lankesh (supra) was dealing with the legality of the sanction. Learned APP invited my attention to the observations in para no. 24. It is observed that there can be invocation of the said Act even though there are no previous offences against him provided there has to be material to indicate that he happens to be a member of the Organized Crime Syndicate (para no. 24). Even though it may

be true that the said observations are made when the grant of approval is challenged, these observations pertain to the interpretation of the provisions of the Act.

24. When above observations are applied to the facts of this case, so far as the Applicant-Himalaya is concerned, there are eight individual offences against him and they pertain to predominantly for committing theft, house breaking etc.. Merely because number of offences mentioned in the charge-sheet, may be here and there, it does not make difference. Apart from that it is pertinent to note that there are two offences which are pending before the Court involving the offence of the theft alongwith the head of the Crime Syndicate. It is mentioned in para no.22 of the affidavit-in-reply.

25. Considering this, I *prima-facie* feels that invocation of the MCOC Act against the Himalaya cannot be faulted. It is important to note that the present Applicant is also involved in the present offence wherein the head of the syndicate Mahesh is also involved.

26. It is pertinent to note that he and present Applicant have been identified in the parade. There may be certain lacunae in the parade as contended by learned Advocate for the Applicant, but I do not find that they are of such nature, so as to disbelieve the outcome

of the parade. All these contentions can be raised at the time of the trial and they cannot be accepted at the time of bail. Even though red colour pulsar is not seized at the instance of the Applicant, no doubt one red motor cycle of different Company is seized. When person is robbed, under fear he may name wrong company of the motor cycle. This ground can be taken at the time of trial.

27. Considering the above, I do not think that the Applicant-Himalaya has made out the case of grant of bail. The provisions of the Section 21 of the MCOC Act comes into picture and in fact I am unable to satisfy myself that bar can be lifted, hence his application needs to be dismissed.

28. So far as Applicant-Vikas is concerned, against him there are two offences individually registered. In one of them, he has acquitted and another he has not yet charge-sheeted. There are no joint offences in between him and head of the Organized Crime Syndicate, accused no. 1. He has not been identified in the parade. It is conducted for him alone. The identification panchnama is not challenged on his behalf. It is true that there are two recoveries of separate cash amounts, one from witness and another from the Secretary of the Patpedhi but there is no materials pointed out which

shows that these amounts were received by him from accused No. 1 being the proceeds of the Organized Crime Syndicate.

29. As the link is missing, I am unable to satisfy myself that he can be denied the bail. The bar under Section 21 is lifted so far as his bail is concerned. For want of materials, it is difficult to believe that he has committed this offence, therefore he is entitled to bail. Hence following order is passed :-

ORDER

- (i) The bail application for the Applicant-Himalaya is rejected.
- (ii) He is at liberty to apply for fresh bail, if trial will not start within a period of two years from today.
- (iii) The bail Application for the Applicant-Vikas is allowed.
- (iv) The Applicant - Vikas arrested in connection with C.R. No. 41 of 2021 with Wathar Police Station, Satara for the offence punishable under Sections 394 read with 34 of the Indian Penal Code with Section 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act, be released on bail on furnishing Personal bond and Surety bond in sum of Rs. 50,000/-.
- (v) The Applicant-Vikas is directed to give attendance

to the Wathar Police Station, Satara from 03.00 to 05.00 p.m.. on third Thursday of every month for two years.

(vi) The Applicant-Vikas is directed not to threaten the prosecution witnesses.

(vii) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail.

30. It is made clear that the these are my prima-facie observations, and the trial Court shall decide the case on its own merits without being influenced by the observations made in this order.

31. Both bail Applications are disposed of in the aforesaid terms.

[S. M. MODAK, J.]