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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1840 OF 2023

Krushna Jyotiram Talekar

....Applicant

vs.

The State of Maharashtra And Anr.

...Respondents

....

Mr. Rakesh Jadhav, for the Applicant.

Mr. Y.M. Nakhwa, APP, for State/Respondent.

Mr. Vilas Surve, PSI, Deonar Police Station.

Mr. Sanjay Dahake, ACP, Deonar Division.

....

CORAM : N.J. JAMADAR, J.

DATE : 22nd JANUARY, 2024

P.C. :

1. This is an application for bail in C.R. No. 407 of 2020 registered with Deonar Police Station for the offences punishable under Sections 307, 451, 452, 380, 324, 323, 504, 527, 427, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), r/w. Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime (M.C.O.C.) Act, 1999 and Section 37 (1)(a) r/w. Section 135 of the Maharashtra Police Act, 1951.

2. The first informant lodged a report with the allegation that on 18th December, 2020, at about 11.30 p.m., someone called him from in front of his house. He went down. The said person had masked his face. He pointed a knife on the waist of the first informant, and took him towards to the road side. Co-accused Aawan Chavan and his associates, Santosh Talekar, Jaysingh Sherkar, Nilesh Pawar and four unknown persons were present thereat. They formed an unlawful assembly and in prosecution of the common object of the said unlawful assembly started to assail the first informant. His father and brother and other family members came to his rescue. Co-accused Santosh @ Buwa Jyotiram Talekar, the brother of the applicant, allegedly assaulted first informant's father on the chest with a knife. He sustained a bleeding injury. First informant's brother Yashwant was assaulted with knife by Jaisingh Sherkar. When residents came to their rescue, the assailants fled away brandishing the knives. It is further alleged that after the informant party went to hospital and to police station to report the matter to the police, co-accused Aawan Chavan and his associates entered into the first informant's house and committed theft of LED TV and ransacked the house.

3. During the course of investigation it transpired that co-accused Aawan Chavan and the rest of the accused were members of an Organized Crime Syndicate. Co-accused Aawan Chavan was the gang leader. The provisions contained in M.C.O.C. Act were, thus, invoked.

4. The applicant came to be arrested on 18th February, 2021, as one of the members of the alleged unlawful assembly in the prosecution of the common object of which the offences were committed and also a member of the Organized Crime Syndicate.

5. The learned Counsel for the applicant submitted that the applicant had no role in the alleged offences. In fact, the applicant was not at all present at the time of the alleged occurrence. The applicant has been roped in for being the brother of Santosh Talekar, the co-accused. As the applicant is the neighbour of the first informant and the witnesses, who were allegedly injured in the said occurrence, they could not have missed to name the applicant as one of the members of the unlawful assembly had he been present.

6. The learned APP resisted the prayer for bail. The learned APP relied upon the contentions in the affidavit-in-reply and the documents annexed with the affidavit-in-reply, which, according to learned APP, squarely implicate the applicant not only for the offences punishable under the Penal Code but also M.C.O.C. Act.

7. The learned APP, however, fairly submitted that the applicant was not named as a member of the unlawful assembly in the prosecution of the common object of which, the offences were allegedly committed, either by the first informant or any of the witnesses.

8. From perusal of the first information report and the statements of the witnesses, it does not appear that any role much less that of rioting armed with deadly weapon has been attributed to the applicant.

9. The learned APP submitted that the co-accused Samadhan Waghmare had made a disclosure statement on 22nd December, 2020, in which the applicant came to be implicated. It is also submitted that the confession of the said co-accused Samadhan Waghmare was recorded under Section 18 of the M.C.O.C. Act.

10. I have perused the alleged confessional statement of Samadhan Waghmare, (Exhibit-D to the affidavit-in-reply). Prima facie, the said statement appears to be exculpatory. In any event, in the said confessional statement of the co-accused Samadhan Waghmare, there is no reference to even the presence of the applicant at the time of the alleged occurrence, much less any role.

11. The disclosure statement dated 22nd December, 2020 also does not advance the cause of the prosecution, as the co-accused Samadhan has named the applicant as one of the associates, who allegedly assaulted the first informant and other injured on the day of occurrence and committed the theft of LED TV and ransacked the house of the first informant. The statement of the co-accused so far as the role of the applicant, prima facie, cannot be said to be such as to

distinctly relate to the discovery made by co-accused Samadhan. It is trite that a statement of the co-accused under Section 27 of the Evidence Act is not a substantive piece of evidence against the non-maker co-accused. Therefore, the said circumstance sought to be arrayed against the applicant is also of no avail to the prosecution.

12. In the circumstances, it is evident that there is no prima facie material against the applicant to connect him with the alleged occurrence. Thus, there is substance in the submission on behalf of the applicant that the first informant and injured having known the applicant as their neighbour could not have missed to name the applicant had he been present at the time of the alleged occurrence.

13. Prima facie, the bar under section 21 of the M.C.O.C. Act, 1999 is not attracted, as from the own showing of the prosecution, the applicant is not named as the co-accused in any of the crimes registered against Aawan Chavan shown in paragraph no.12 of the affidavit-in-reply. In fact, in para no.13, apart from the instant crime, no other offence is alleged to have been registered against the applicant. Prima facie, there is no material to show that the applicant is a member of the Organized Crime Syndicate and had indulged in continuing unlawful activity. As there is no antecedent, it is unlikely that the applicant will indulge in the offences in future.

14. In the aforesaid view of the matter and having regard to the

fact that the applicant is in custody since 18th February, 2021 and it is unlikely that the trial can be concluded in a reasonable period, I am inclined to exercise the discretion in favour of the applicant.

15. Therefore, the following order is passed:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Krushna Jyotiram Talekar be released on bail in C.R. No.407 of 2020, registered with Deonar Police Station, Mumbai, on furnishing a P. R. Bond of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for a period of three years or till conclusion of the trial, whichever is earlier;
- (iv) The applicant shall not tamper with the prosecution evidence. 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;
- (v) 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;

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court;
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove;

Application disposed.

(N.J. JAMADAR, J.)