IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2682 OF 2023

Satish Jethanand Dhanani	...	Applicant
versus		
The State of Maharashtra and Anr.	...	Respondents

Mr. Vivek Kantawala with Mr. Jash B. Vyas, Mr. Vivek M. Sharma, Mr. Amey Patil, Mr. Punit D. Vyas, for Applicant.
Mr. Y.M.Nakhwa, APP for State.
Mr. Samir Vaidya with Mr. A.K.Millwala, for Respondent No.2.
Mr. Sanjay Taralgath, PI, AEC, Mumbai present.

CORAM: N.J.JAMADAR, J.
DATE : 7 FEBRUARY 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant who is arraigned in C.R.No.115 of 2013 registered with Anti-Extortion Cell, DCB-CID (Original C.R.No.403 of 2013 registered with Juhu Police Station) for the offences punishable under Sections 120B, 387 read with Section 34 of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, along with the co-accused, has preferred this application to enlarge him on bail.

3. The gravamen of indictment against the applicant and the co-accused can be summerized as under :

3.1 The first informant is engaged in real estate business. There was a dispute between the first informant and co-accused Rajan and Kishor, in respect of a property situated at Powai, Mumbai. On 3 September 2013, the first informant allegedly received a call from a person, who identified himself as Ravi Pujari, and threatened the first informant to settle the dispute with the co-accused Rajan and Kishor. When the first informant tried to reason with the said person by asserting that the dispute was subjudice, Ravi Pujari threatened to kill him. Such threatening call were allegedly again received by the first informant. The first informant alleged that in respect of the property which was under dispute, a MOU was executed on 25 July 2008. In respect of the said property, the first informant had instituted suits bearing Nos.3300 of 2007 and 3301 of 2007 against the co-accused Mangesh Sawant and others.

3.2 The first informant alleged that in order to coerce the first informant to settle the dispute with the co-accused Rajan, Kishor and Mangesh, the first informant was threatened with dire consequences by Ravi Pujari. Co-accused Rajan, Kishor and Mangesh allegedly had thick relations with the said Ravi Pujari, a gangster. Hence, the first informant lodged the report.

3.3 C.R.No.403 of 2013 was, thus, registered at Juhu Police Station for the offence punishable under Section 387 read with Section 34 of the Indian Penal Code initially against Rajan Sujnani, Mangesh Sawant, Kishor Vatnani, Hari Ramnani and Parshuram Shinde. On 14 December 2015, the investigating agency filed ‘A’ Summary report before the learned Magistrate. The first informant filed a Protest Petition on 23

August 2017. By an order dated 23 December 2021, the learned Magistrate directed further investigation.

3.4 Alleging that the further investigation revealed the complicity of the applicant and the co-accused not only for the offences punishable under Sections 120B and 387 read with Section 34 of the Indian Penal Code, but also under the MCOC Act, prior approval under Section 23(1)(a) of the Act, came to be obtained, followed by a sanction under Section 23(2) of the Act. The applicant came to be arrested on 25 November 2022

3.5 As borne out by the material on record and the affidavit in reply filed on behalf of the Respondents, the crux of the allegations against the applicant is that the applicant and co-accused utilized services of dreaded gangster Ravi Pujari, having known that Ravi Pujari was a leader of the organized crime syndicate. The applicant and co-accused, on the one part, and the first informant executed a MOU in respect of the property situated at Powai. Had the first informant caved in on account of the threats given by the co-accued Ravi Pujari and handed over the subject property, the applicant and the co-accused would have benefited financially. The applicant and the co-accused had thus hired the services of an organized crime syndicate headed by gangster Ravi Pujari with intent to have pecuniary gain and other advantages.

4. Learned Counsel for the Applicant submitted that the invocation of the provisions contained in the MCOC Act, 1999 is wholly unsustainable. Mr. Kantawala

would urge that if the substance of the matter is looked at, the only irresistible inference that can be drawn is that in respect of a property dispute, which arose in the year 2007, the applicant is arraigned for the offences punishable under the MCOC Act, 1999, in the year 2022. That is a clear abuse of the process of the court and the provisions contained in the MCOC Act, 1999 to trample upon the rights of the applicant.

5. Mr. Kantawala strenuously submitted that by no stretch of imagination, the applicant can be said to have indulged in "continuous unlawful activity" defined under Section 2(d) of the MCOC Act, 1999. There are no criminal antecedents of the applicant. No crime has been registered against the applicant. The applicant was never involved in any of the matters in respect of which crimes have been registered against Ravi Pujari, the alleged gang leader. What exacerbates the situation is the delay of more than 17 years in invoking the provisions of the MCOC Act, 1999 in an otherwise purely civil dispute. Mr. Kantawala would urge that even if the statements of the witnesses, which the prosecution proposes to rely upon, are taken at their face value, no element of criminality, much less, continuing unlawful activity can be discerned.

6. Learned APP resisted the prayer for bail. It was submitted that the material on record indicates that the applicant and the co-accused had hired the services of a dreaded gangster. Emphasis was sought to be laid on the statements of

witnesses who have stated about the co-accused Parshuram Shinde, who passed away on 17 May 2015, and others having utilized the services of Ravi Pujari to give threats to the first informant so as to coerce him to settle the dispute with the co-accused.

7. An endeavour was made to urge that under the MOU dated 29 May 2012, the applicant was one of the beneficiary being a constituent of the Party of the Third Part to the said MOU. Since the witnesses have stated about the presence of the applicant in the meetings in which a conspiracy to avail the services of Ravi Pujari was hatched and co-accused Parshuram Shinde and Kishor Vatnani had telephonic conversation with Ravi Pujari, it was urged that the applicant was a member of the organized crime syndicate, though no crime has been registered against the applicant. Reliance was also placed on the transcript of the telephonic conversation between the first informant and Ravi Pujari, to lend support to the prosecution version that the first informant was threatened by Ravi Pujari.

8. Mr. Sameer Vaidya, learned Counsel for the Respondent No.2, supplemented the submissions of the learned APP. It was submitted that the very terms of the MOU would indicate that the bargain was ex-facie unconscionable and driven by the desire to have pecuniary advantage to the applicant and the co-accused.

9. I have carefully perused the material on record and the affidavit in reply filed on behalf of the Respondents. To begin with, it is necessary to note that the prosecution primarily and singularly banks upon the cases registered against Ravi

Pujari to draw home the point that he is a leader of the organized crime syndicate, of which the applicant and co-accused are the members. It is not the prosecution case that any crime has been registered against the applicant, much less, there is an element of commonality in the crimes registered against the gang leader and the applicant. To put it in other words, in none of the crimes registered against the gang leader, the applicant is involved as the co-accused. The accusation against the applicant is that the applicant and the co-accused had knowingly hired the services of Ravi Pujari, a dreaded gangster.

10. Secondly, the time lag and the developments since the dispute arose between the first informant and the co-accused cannot be lost sight of. It appears the dispute arose in the year 2007. The dispute led to the institution of Suit Nos. 3300 of 2007 and 3301 of 2007, in this Court. In respect of the alleged threats by Ravi Pujari, the first informant lodged FIR in the year 2013. Applicant was not named as an accused in the said FIR. Initially, 'A' Summary was filed. Pursuant to the directions of the learned Magistrate to carry out further investigation, chargesheet has been lodged on 22 February 2023, inter alia, for the offences punishable under the MCOC Act, 1999.

11. Learned APP made an endeavour to explain away the delay and unearthing of further material against the applicant and the co-accused so as to invoke the offences punishable under the MCOC Act, 1999 by putting forth a submission that

the witnesses mustered courage after Ravi Pujari came to be arrested and Parshuram Shinde, the original accused No.6, passed away. At this stage, the justifiability of this explanation which the witnesses have sought to offer giving further statements in derogation of their earlier version need not be delve into. However, the time lag deserves to be kept in view.

12. I have perused the statements of the witnesses. In the supplementary statement dated 4 April 2022 witness A, stated that he had taken assistance of the applicant to resolve the dispute with a builder. The deceased accused Parshuram Shinde had called the applicant and other co-accused for a meeting and on 12 January 2012, two MOUs were signed, to which the said witness was a party and the applicant was a constituent of the Third Party.

13. With regard to the incident involving the first informant, Witness A claimed that he had known that there was a dispute between the co-accused Hari Rangnani and Kishor Vatnani, directors and shareholders of Varsharaj Realtors Pvt. Ltd., co-accused Mangesh Sawant, Director of Sailee Developers and the first informant with regard to the property situated at Powai. Witness A claimed to have witnessed the occurrence in which co-accused Kishor had stated that they would exert pressure on the first informant by utilizing the services of the gangster to get the dispute resolved, the role attributed to the applicant is that of being present in the said meeting. Co-accused Kishor had allegedly suggested that pressure be exerted on the

first informant by utilizing the services of Ravi Pujari.

14. The only circumstance sought to be pressed into service against the applicant is that at the instance of the applicant, co-accused Kishor had given a sack containing money to Parshuram Shinde. At that time, Kishor had allegedly thanked Parshuram Shinde for settling the dispute by utilizing the services of Ravi Pujari. In the statement recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure also, the role of being present in the meetings, has been attributed to the applicant.

15. Witness B claimed to have rendered services as the consultant to deceased accused Parshuram Shinde. He had examined the documents pertaining to the property at Powai. At that time, he had seen documents like agreements involving the applicant. He claimed to have seen the MOU dated 29 May 2012 incorporating the shares in the proceeds to be realised.

16. Witness C is the son of the deceased Parshuram Shinde. He stated that he was aware of the dispute between the first informant, applicant and the co-accused over the property at Powai and that his father had thick relations with Ravi Pujari. He claimed to have known the applicant also.

17. Witness D stated that he had disputes with the applicant and co-accused Rajan over the property situated at Powai. Applicant, co-accused Rajan and Kishor had taken him to the house of the deceased Accused Parshuram Shinde. At that time,

the deceased accused had told him that they had connections with the underworld and he should settle the dispute with the applicant and co-accused. He also claimed to have received telephone calls from a person who identified himself as Ravi Pujari.

18. Witness E claimed to have worked as a driver for the deceased accused Parshuram Shinde. He claimed to have known the applicant and the co-accused. He had overheard the applicant and the co-accused utilizing the services of gangster Ravi Pujari to settle the dispute with the first informant.

19. Evidently, the statements of the son and driver of Parshuram Shinde, prima facie, do not have incriminating tendency qua the applicant. Nor the statement of the consultant of the deceased Parshuram Shinde bears upon the existence of organized crime syndicate. The statement of witness E is required to be considered in the light of time lag of almost eight years since the alleged occurrence.

20. That leaves the MOU dated 29 May 2012. The applicant is stated to be a constituent of the Third Party to the said MOU along with the co-accused Kishor Vatnani and Hari Ramnani. Under the said MOU, third party was to get 30% of the total net remuneration received. That document by itself, prima facie, does not have any incriminating tendency.

21. In the light of the interdict contained in Section 21(4) of the Act, 1999, the complicity of the applicant for the offences punishable under the MCOC Act, 1999 is required to be appreciated in the context of the aforesaid material. The import of the

provisions contained in Section 21(4) of the Act, 1999 was instructively expounded by the Supreme Court in the case of **Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and Anr.**[1]. The relevant observations of the Supreme Court read thus :

> "44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.
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> 45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.
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> 46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to

1 (2005) 5 SCC 294.

> the provisions contained in sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

22. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether there is adequate material to indicate prima facie that the Applicant is a member of organized crime syndicate within the meaning of clause (f) of sub-section (1) of Section 2 of the Maharashtra Control of Organized Crimes Act, 1999. For an answer, it has to be seen whether there is material to show that the Applicant has either singly or collectively indulged in continuing unlawful activities. Under clause (d) of sub-section (1) of Section 2, 'continuing unlawful activity' means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

23. If the material pressed into service against the applicant is appraised on

the aforesaid touchstone, the question of applicability of the provisions of the Act, 1999 qua the applicant appears to be debatable. As noted above, the applicant is not arraigned as the co-accused in any of the crimes which have registered against Ravi Pujari. Nay there is no criminal antecedent of the applicant. Neither there is material to indicate that the applicant had called Ravi Pujari and asked him to exert pressure on the first informant. Nor the applicant had suggested that the services of Ravi Pujari be utilized. The only role attributed to the applicant is that of being present in the meetings.

24. At this stage, the court cannot lose sight of the fact that the witnesses are deposing about the said meetings and occurrences which allegedly took place, after about 10 years.

25. In the face of the aforesaid fragile nature of the material pressed into service against the applicant, the court would be justified in drawing an inference that the applicant may not be guilty of the offences punishable under MCOC Act, 1999 for which he has been arraigned. Since there is no criminal antecedent of the applicant, an inference also becomes justifiable that the applicant will not indulge in identical activity if released on bail.

26. The applicant appears to be 60 years of age. He is in custody since 25 November 2022. Though the co-accused Ravi Pujari is arrested in another crime, he is yet to be arrested in this crime as the approval of Senegal from where he is

extradited is yet to be obtained. Co-accused Kishor and Rajan are stated to be absconding. Co-accused Mangesh Sawant has been granted pre-arrest bail. It is unlikely that the trial can be commenced and concluded within a reasonable period. I am, therefore, inclined to exercise the discretion in favour of the applicant.

27. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Satish Jethanand Dhanani be released on bail in C.R.No.115 of 2013 registered with Anti Extortion Cell, DCB, CID, Mumbai on furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Anti Extortion Cell, DCB, CID, Mumbai on first Monday of every alternate month in between 11 am to 1 pm for a period of two years or till the framing of the charge, whichever is earlier.

(iv) The applicant shall not leave the country without the prior permission of the Special Court.

(v) 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.

(vi) 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.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) The applicant shall not indulge in the identical activity for which he has been arraigned in this case.

(ix) 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.)

Signed by: S.S.Phadke
Designation: PS To Honourable Judge
Date: 08/02/2024 20:55:57