IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.265 OF 2024

Mohd. Bilal Kasim Qureshi ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Darshit Jain with Mr. Nikitesh Kotangale, for Applicant.
Mr. Avinash Naik, APP for State.
ACP Kalpana Gadekar, Kalachowki Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 24 JUNE 2024

ORDER :

1. The Applicant, who is arraigned in C.R.No.70 of 2019 registered with Kalachowki Police Station, Mumbai, for the offences punishable under Sections 120B, 395, 397, 412, 341 and 201 of the Indian Penal Code, Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act, 1999), Section 4 read with Section 25 of the Arms Act, 1959 and Section 37(1)(A) read with Section 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

2. The indictment against the applicant and the co-accused runs as under :

2.1 On 6 April 2019 at about 9.50 p.m., while the first informant – a jeweller, was on his way to home alongwith gold ornaments, two unknown persons accosted him near the pandal of Chinchpokali Ganesh Mandal. They tried to snatch away the bag containing gold ornaments from the first informant. The latter resisted.

Thereupon, one of the robbers assaulted the first informant by means of a chopper on his right hand. As the first informant raised alarm, another robber unleashed blows on the left shoulder, biceps, wrist and forehead of the first informant. Eventually, the robbers snatched away the bag containing the gold ornaments. The robbers also threatened to kill the persons who attempted to rescue the first informant.

2.2 Suspects were identified on the basis of the leads obtained through CCTV footages, CDR location and other technical evidence. Co-accused Ayub Alimuddin Shaikh @ Ayub @ Chikana came to be arrested on 12 April 2019. Pursuant to the discovery made by the co-accused, the motorcycles which were used in the commission of the crime by the robbers were recovered. Chopper and gold ornaments weighing 146 gms were also recovered. Pursuant to the discovery made by another co-accused – a jeweller, two yellow metal ingots weighing 475 and 555 gms were also recovered.

2.3 Investigation further revealed that Ayub (A1) was the leader of an organized crime syndicate. Ayub (A1) resorted to the modus operandi of hiring new members for carrying unlawful activities for the said organized crime syndicate. Qua the applicant, it was alleged that the applicant had committed theft of two motorcycles used in the commission of the crime, handed over the same to Ayub (A1) and also took part in the robbery along with the co-accused. It was further alleged that a number of crimes were registered against Ayub (A1) as well as the applicant. The applicant came to be arrested on 14 August 2021. The applicant also made discoveries.

3. Mr. Jain, learned Counsel for the Applicant, submitted that even if the prosecution case is taken at par , the role attributed to the applicant does not transcend beyond supplying two allegedly stolen motorcycles to Ayub (A1), the alleged gang leader. Mr. Jain further submitted that the discovery allegedly made by the applicant under Section 27 of the Indian Evidence Act, is of no assistance to the prosecution as nothing can be said to have been recovered pursuant to the statement made by the applicant. It was further submitted that the witnesses have simply stated that they identified the applicant, but no reasons were spelled out as to why the applicant was identified by the witnesses. Attention of the Court, in this context, was invited to an order passed by this Court in Santosh Dattatray Jamune V/s. The State of Maharashtra, BA No.832 of 2015 dated 4 August 2015, wherein this Court observed, inter alia, that it is expected in the test identification parade that the witness should give reason for identification and mere identification is not sufficient.

4. Mr. Jain further submitted that, at any rate, the applicant cannot be roped in as a member of the organized crime syndicate, as there is no commonality in any of the crimes registered against the applicant and the alleged gang leader. Therefore, the interdict contained in Section 21(4) of the MCOC Act, 1999 does not operate.

5. As against this, Mr. Naik, learned APP resisted the prayer for bail. It was

urged that the applicant had played an active and major role in the commission of the alleged offences. Controverting the submissions on behalf of the applicant that the role attributed to the latter is only of supplying the allegedly stolen motorcycles, learned APP submitted that there is material to show the presence of the applicant at the time of the alleged occurrence. Moreover, the applicant has been identified in the Test Identification Parade. Thus, the applicant does not deserve to be enlarged on bail.

6. While rejecting the bail application of Ayub (A1)- BA No.2938 of 2023 dated 4 march 2024, this Court had observed, inter alia, as under :

> "14. To begin with, the injury certificate of the first informant indicates that the first informant had sustained multiple lacerations by means of a sharp weapon. There is prima facie material to show that the first informant was robbed of a huge amount of gold ornaments and in committing the robbery the robbers caused grievous hurt to the first informant.
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> 15. The submission on behalf of the applicant that the applicant had no role in the alleged robbery as he was not the person who allegedly assaulted the first informant while committing the robbery, at this stage, does not advance the cause of the applicant. The applicant has been roped in as the gang leader of an organised crime syndicate.
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> 16) To constitute a continuous unlawful activity within the meaning of Section 2 (d) of the MCOC Act, 1999, the activity must have been undertaken either singly or jointly as a member of the organised crime syndicate or on behalf of such syndicate. "Organised crimes syndicate" under Section 2 (f) of the MCOC

> Act, 1999 means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime. The material on record prima facie indicates that the alleged robbery was committed by the co-accused for the organised crime syndicate.
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> 17) Mr. Jain laid emphasis on the fact that the co-accused have not been arraigned along with the gang leader in any other crime. Therefore, it cannot be said that there is any organised crime syndicate of which the applicant is the gang leader and, the co-accused the members. This submission is required to be appreciated in the light of the fact that the requirement is of two charge-sheets qua organised crime syndicate and not each of the persons who is alleged to be a member of such syndicate. Undoubtedly, there has to be a nexus between the person, who is sought to be implicated as a member and the organised crime syndicate. If such nexus is established, the fact that the said person is not implicated in any other crime or has not been implicated along with the co-accused/ member of the gang does not detract materially, from the charge for the offences punishable under Sections 3 (1)(ii), 3(2) and 3 (4) of the MCOC Act, 1999.
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> 18) In the instant case, the discoveries allegedly made by the applicant leading to the recovery of the chopper which were allegedly used by the robbers, and, more importantly, 145 grams of gold ornaments, in the totality of the circumstances, prima facie establish the nexus between the applicant and the co-accused-alleged assailants, who robbed the first informant."

7. Mr. Jain made an endeavour to urge that the role of Ayub (A1) is quite distinct. The material pressed into service on behalf of the prosecution against the

applicant is sketchy.

8. I have carefully perused the material on record and given anxious consideration to the rival submissions. The prosecution has attributed to the applicant the role of being a member of organized crime syndicate and facilitating the commission of the offences by supplying stolen motorcycles. At the outset, it is necessary to note that the reasons which weighed with this Court in rejecting the application of Ayub (A1) (extracted above) are germane to decide the instant application. This Court prima facie found that Ayub (A1) was the leader of the organized crime syndicate and the interdict contained in Section 21(4) of the Act, 1999 comes into play.

9. The submission on behalf of the Applicant that the applicant had allegedly only supplied two stolen motorcycles to Ayub (A1) looses sight of the fact that the memorandum of disclosure statement allegedly made by the applicant indicates that the applicant accompanied the assailants to the scene of occurrence. To add to this, the applicant was identified in Test Identification Parade by the witnesses who had seen the occurrence. Thirdly, the antecedents of the applicant also deserve to be kept in view. Apart from the five crimes registered against the applicant for the offence punishable under Section 379 of the IPC primarily, it is necessary to note that the applicant has been arraigned in MCOC Case No.1 of 2016 arising out of C.R.No.58 of 2015 registered with Poynad Police Station for the offences punishable

under Sections 395, 397, 347, 412 of the Indian Penal Code and Section 3 read with Section 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999.

10. The submission on behalf of the applicant that there does not appear any commonality between the crimes registered against the applicant and Ayub (A1), the alleged gang leader, has already been dealt with in paragraph 17 of the order dated 4 March 2024, extracted above. At this stage, in the face of the material on record, it would be rather hazardous to draw an inference that there is no nexus between the applicant and the organized crime syndicate.

11. At any rate, in the backdrop of the crimes registered against the applicant, especially MCOC Case No.1 of 2016 for the offences punishable under Sections 395, 397, 347, 412 of the Indian Penal Code and Section 3 read with Section 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999, an inference cannot be drawn that the applicant will not indulge in identical offences, if released on bail. Thus, the second condition envisaged by Section 21(4) of the MCOC Act, 1999 cannot be said to have been fulfilled. I am, therefore, not inclined to exercise discretion in favour of the applicant.

12. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) 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.)