IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3622 OF 2023

Mohammed Ilyash Bilal Kapadia … Applicant
Versus
The State of Maharashtra … Respondent

WITH
BAIL APPLICATION NO. 253 OF 2024

Vipul Dayabhai Gajipura … Applicant
Versus
The State of Maharashtra … Respondent

WITH
BAIL APPLICATION NO. 287 OF 2024

Mohammed Aslam Zakariya Naviwala … Applicant
Versus
The State of Maharashtra … Respondent

WITH
BAIL APPLICATION NO. 1334 OF 2024

Altaf Gafurbhai Patel … Applicant
Versus
The State of Maharashtra … Respondent

WITH
BAIL APPLICATION NO. 4238 OF 2023

Mohidin Azam Beg @ Arif Mirza … Applicant
Versus
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO. 1281 OF 2024
IN
BAIL APPLICATION NO. 3622 OF 2023
WITH
INTERIM APPLICATION NO. 1279 OF 2024
IN
BAIL APPLICATION NO. 253 OF 2024

WITH
INTERIM APPLICATION NO. 1284 OF 2024
IN
BAIL APPLICATION NO. 287 OF 2024
WITH
INTERIM APPLICATION NO. 1630 OF 2024
IN
BAIL APPLICATION NO. 1334 OF 2024
WITH
INTERIM APPLICATION NO. 1570 OF 2024
IN
BAIL APPLICATION NO. 4238 OF 2023

Faisal Farook Noorani ... Applicant
Versus
The State of Maharashtra ... Respondent

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Mr. Aabad Ponda, Senior Counsel, a/w Mr. Rajendra Rathod, Ms. Shabana Shah, Mr. Sohail Ahmed, Mr. Umar Dalvi, Mr. Mujtaba Shaikh, Mr. Dhruv B. Jain, Mr. Zeeshan Sardar a/w Mr. Abdullah Maknojia, Ms. Meenaz Moazawala and Mr. Aamir Koradia for Applicant in BA/1334/2024.

Mr. Rajendra Rathod a/w Ms. Shabana Shah, Mr. Sohail Ahmed, Mr. Umar Dalvi, Mr. Mujtaba Shaikh, Mr. Dhruv B. Jain, Mr. Zeeshan Sardar, Mr. Abdullah Maknojia, Ms. Meenaz Moazawala, Mr. Aamir Koradia and Mr. Harsh Ramchandani for Applicant in BA/253/2024.

Mr. Mithilesh Mishra for Applicant in BA/3622/2023 and BA/4238/2023.

Mr. Husen Shaikh a/w Mr. Jindag Shah for Applicant in BA/287/2024.

Mr. Nitin Gaware Patil a/w Mr. Shantanu Kolhe i/b Mr. Shantanu Kolhe for Intervenors in IA/1281/2024 in BA/3622/2023, IA/1279/2024 in BA/253/2024, IA/1284/2024 in BA/287/2024, IA/1630/2024 in BA/1334/2024 and IA/1570/2024 in BA/4238/2023.

Mr. Hiten Venegaonkar, Govt. Pleader a/w Ms. Megha Bajoria, APP for Respondent-State.

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CORAM: MANISH PITALE, J.
DATE : 28th JUNE 2024

P.C. :

. These five bail applications have been filed by the accused persons, seeking bail in connection with C.R. No. 109 of 2022 dated 25th July 2022 registered with Anti-Extortion Cell, Mumbai, for offences under Sections 387, 506(2), 120-B read with 34 of the Indian Penal Code, 1860 (IPC), Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) and Sections 3 and 25 of Arms Act, 1959.

2. The applicants were arrested and they have remained behind bars. This Court is informed that two of the applicants had moved applications for discharge upon filing of charge-sheet before the Special Court. The applications were dismissed and the said applicants filed Criminal Appeal No. 617 of 2023. By an order 12th January 2024 passed by the Division Bench of this Court, the appeal was admitted, observing that arguable questions arise with respect to applicability of Sections 506(2) of the IPC, in the facts of the present case. While admitting the appeal, the Division Bench of this Court stayed further proceedings before the Special Court, thereby staying the trial.

3. Mr. Aabad Ponda, Senior Counsel, alongwith Mr. Rajendra Rathod, Mr. Mithilesh Mishra and Mr. Husen Shaikh, learned counsel appearing for the applicants, submitted that in the present case, the invocation of MCOCA can be shown to be *prima facie*

unsustainable and that the ingredients of the offences under Sections 387 and 506(2) of the IPC are not made out, even if the statement of the informant leading to registration of FIR is to be accepted as it is.

4. The learned Senior Counsel appearing for the applicants relied upon judgment of the Supreme Court in the case of ***State (NCT of Delhi) v/s. Brijesh Singh @ Arun Kumar, 2017 10 SCC 779***, to contend that for the provisions of MCOCA to be invoked, there has to be an allegation of an organised crime being committed in the State of Maharashtra. By relying upon definition of the expression 'organised crime' as defined under Section 2(e) of the MCOCA read with definition of 'continuing unlawful activity' under Section 2(d) of the MCOCA, it was submitted that since it can be demonstrated that none of the ingredients of the alleged offences are made out, MCOCA could not have been invoked in the first place.

5. As regards the alleged offence under Section 387 of the IPC, which pertains to putting a person in fear of death or of grievous hurt in order to commit extortion, the learned Senior Counsel placed specific reliance on the judgment of a Division Bench of this Court in the case of ***Hemant Dhirajlal Banker v/s. The State of Maharashtra & Anr.*** *(judgment and order dated 22nd June 2023 passed in Criminal Application No. 488 of 2020)*. It was submitted that the Division Bench of this Court had deliberated upon the

ingredients of the offence under Section 387 of the IPC read with Section 383 thereof and applying the ratio of the said judgment to the facts of the present case would show that even a *prima facie* case is not made out against the applicants.

6. As regards offence under Section 506(2) of the IPC, it was submitted that if the statement allegedly made on behalf of the applicants threatening the informant is to be taken into consideration, by no stretch of imagination can it be said that the informant was put under threat of causing his death or inflicting grievous hurt upon him and therefore, the ingredients of the said offence are also not made out.

7. Apart from the aforesaid, it was submitted that all the allegations made in the statement of the informant, prior to giving the details of the threat received in Mumbai, pertain to incidents alleged to have taken place in the State of Gujarat. In that regard, attention of this Court was invited to complaints submitted by the informant himself before the Police in the State of Gujarat with regard to the very same incidents, wherein the allegations now sought to be levelled did not find mention. In fact, the concerned authorities of the Police in the State of Gujarat, closed the case and intimated the informant that no evidence could be found and that the dispute sought to be raised by the informant appeared to be a civil dispute. On the basis of the aforesaid submissions, the learned Senior Counsel for the applicants pressed for their release on bail.

As regards emphasis placed on their criminal antecedents, reliance was placed on the order passed by the Supreme Court in Special Leave Petition (Criminal) No. 1815 of 2022, dated 30th May 2022, whereby the Supreme Court granted bail to the accused persons, despite provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015, having been invoked against them.

8. On the other hand, Mr. Hiten Venegaonkar, Government Pleader, along with Ms. Megha Bajoria, APP, appearing for the respondent-State, submitted that the tenor of the statement of the informant on the basis of which the FIR is registered, shows that the applicants meted out threats and in that process called upon the informant to pay amount of Rs.50 lakhs, if he intended to carry on business in Gujarat and it is in continuation of such acts that the threat was received by the informant in Mumbai from an international mobile number to desist from reporting such threats given in Gujarat and also to abide by the demands made by the applicants. On this basis, it was submitted that the offence committed at Mumbai, was in continuation of the acts undertaken by the applicants in the State of Gujarat, thereby sufficiently satisfying the requirements of the MCOCA, which according to Mr. Venegaonkar, has been correctly invoked in the present case.

9. Relying on the aforementioned judgment of the Supreme Court in the case of ***State (NCT of Delhi) v/s. Brijesh Singh @***

Arun Kumar (supra), it was submitted that the competent authority in the orders sanctioning invocation of MCOCA, reference was made to two cases already filed and pending in the State of Gujarat and that the said cases could certainly be taken into consideration as per the ratio of the said judgment of the Supreme Court. It was submitted that since ingredients of offences both under Sections 387 and 506(2) of the IPC, are satisfied in the facts of the present case, MCOCA has been correctly invoked and that there is no substance in the contentions raised in that regard on behalf of the applicants.

10. It was further submitted that a bare reading of the statement of the informant, leading to registration of the FIR, would show that the applicants had threatened the informant not to approach them for refund of his money and that they had also demanded amount of Rs.50 lakhs, failing which the informant would not be permitted to carry on the business in State of Gujarat. When the threat extended to the informant at Mumbai, on his mobile number, is appreciated in the backdrop of such acts of the applicants, it becomes clear that the basic ingredients of the said offences are made out and that reliance placed on the judgment of the Division Bench of this Court in the case of ***Hemant Dhirajlal Banker v/s. The State of Maharashtra & Anr.*** (supra) is misplaced.

11. Mr. Nitin Gaware Patil, learned counsel appearing for the informant, supported the contentions of the learned GP and in

addition, he relied upon the judgment of Supreme Court in the case of ***Zakir Abdul Mirajkar v/s. The State of Maharashtra & Ors., 2022 SCC OnLine SC 1092***, to contend that in the present case nexus and link were clearly established in order to demonstrate, even at this stage, that the applicants had indulged in continuing unlawful activity and hence, in organised crime. On this basis, it was submitted that MCOCA was correctly invoked and that the applicants having criminal antecedents ought not to be shown indulgence by this Court.

12. At this stage, the learned Senior Counsel appearing for the applicants again referred to the statement of the informant leading to registration of the FIR and he submitted that there was a major inconsistency in the said statement. For that purpose, he invited attention of this Court to the opening words in the statement of the informant to the effect that he was residing in the stated address at Mumbai for the past six months. In that regard, he then invited attention of this Court to the specific threat allegedly received on 7th September 2021, when he was in his house at Mumbai. It was emphasized that while the informant allegedly received the threat in his house on 7th September 2021, he approached the Police on 25th July 2022 i.e. about more than ten months after the incident and yet, he claimed in the opening words that he was residing in the said house only for the past six months. On this basis, it was submitted that the entire statement of the informant is based on falsity and imagination, further showing

that a strong *prima facie* case is made out by the applicants.

13. This Court has considered the rival submissions in the backdrop of the material placed on record. The applicants have specifically contended that MCOCA has been wrongly invoked and that the allegations of the informant, even if taken on face value, do not give rise to a situation where provisions of the MCOCA could be invoked.

14. In order to appreciate the said contentions raised on behalf of the applicants, it would be necessary to refer to the judgment of the Supreme Court in the case of ***State (NCT of Delhi) v/s. Brijesh Singh @ Arun Kumar*** (supra). In the said case, the Supreme Court dealt with two questions, specifically recorded in paragraph 12.1 and 12.2, which read as follows :

> *"**12.** The points that arise for consideration in this case are:*
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> ***12.1.** (i) Whether charge-sheets filed in competent courts outside the National Capital Territory of Delhi can be taken into account for the purpose of constituting a "continuing unlawful activity", and*
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> ***12.2.** (ii) Whether there can be prosecution under MCOCA without any offence or organised crime being committed within Delhi."*

15. At the outset, the learned Senior Counsel appearing for the applicants conceded that the answer to the first question given by the Supreme Court, shows that reliance placed by the competent authority on two cognizable offences registered at Police Stations

in Surat, Gujarat, cannot be found fault with. But, reliance is placed on the answer given by the Supreme Court to the second question framed in the aforementioned case. In that regard, this Court will have to consider as to whether a case is made out by the applicants to show that the allegations in the present case do not even *prima facie* make out any offence punishable with imprisonment for more than three years. It is only if the applicants make out such a *prima facie* case that they would be able to show at this stage itself about a distinct possibility of escaping from the clutches of the provisions of the MCOCA. On this basis, it is contended on behalf of the applicants that if the necessary ingredients of the alleged offence said to have been committed in Mumbai, are not made out, MCOCA would not apply, indicating that the applicants are entitled to be enlarged on bail.

16. Considering the nature of submissions made on behalf of the applicants in this regard, it is necessary for this Court to render findings on the contentions raised on behalf of the applicants with regard to the necessary ingredients concerning offences under Sections 387 and 506(2) of the IPC. If the applicants succeed in demonstrating that the necessary ingredients are even *prima facie* not made out, the invocation of MCOCA itself can be said to be unsustainable.

17. In order to render findings on the said aspect of the matter, this Court shall now proceed to examine the nature of allegations made by the informant and as to whether the necessary ingredients

of offences under Sections 387 and 506(2) of the IPC can be said to be made out.

18. As regards Section 387 of the IPC, which pertains to offence of putting a person in fear of death or of grievous hurt in order to commit extortion, reference will have to be made to Section 383 of the IPC, which defines extortion. The said two provisions read as follows:

> *"**383. Extortion.** - Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".*
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> ***387. Putting person in fear of death or of grievous hurt, in order to commit extortion.** - Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

19. A bare perusal of the above quoted provisions would show that for an offence of extortion under Section 383 of the IPC and for an offence under Section 387 thereof, a person has to be put in fear of injury, grievous hurt or death for dishonestly inducing such a person to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security. As to what would constitute the necessary ingredients of the said offence was considered by this Court in the

aforesaid judgment in the case of ***Hemant Dhirajlal Banker v/s. The State of Maharashtra & Anr.*** (supra) and it was held in similar circumstances that if the informant is put under pressure to give up his demand for repayment of money, the offence of extortion is not made out. The Division Bench of this Court has made the aforesaid observations while considering the question as to whether offence pertaining to extortion registered in such circumstances deserved to be quashed. It was eventually held that since the informant was pressurized only to give up his demand for repayment of his money, no offence under Section 387 was made out and same was quashed.

20. In the present case, the threat allegedly received by the informant at Mumbai, indicates that he was asked not to contact two of the accused persons, not to contact them by phone and not to make phone calls here and there, failing which the informant would face "trouble". Much emphasis is placed by the respondents on the portion that the informant was also directed to do as demanded by the persons from Surat. According to the respondents, the reference to such persons from Surat pertains only to the accused persons and none else.

21. This Court is of the opinion that even if the aforesaid threat allegedly received by the informant at Mumbai, is accepted at its face value, the essential ingredients of the offence under Section 387 of the IPC cannot *prima facie* be said to be made out. It was sought to be argued on behalf of the respondents that since the

informant had mentioned in the earlier portion of his statement that a demand of payment of Rs.50 lakhs was made in Gujarat and he was told that unless such payment was made, he would not be allowed to do business, the threat received in Mumbai was in continuation thereof. In the first place, the said alleged demand was made in the State of Gujarat. It appears to have no connection with the threat allegedly received in Mumbai on 7th September 2021. The narration of events that allegedly took place in Gujarat admittedly pertains to the year 2020. The applicants are justified in contending that it is too farfetched to claim that the alleged demand of Rs.50 lakhs made in Gujarat in the year 2020 can become the basis for claiming that the ingredients of the offence under Section 387 of the IPC have been made out.

22. In any case, contemporaneous material on record pertaining to the year 2020 and the alleged incidents in Gujarat, shows that the informant submitted written complaints before the Police authorities in Gujarat, narrating the incidents and yet, nowhere did the informant state any such incident about the applicants demanding Rs.50 lakhs from him, failing which he would not able to do business in Gujarat. Such material does make out a strong *prima facie* case in favour of the applicants in respect of the alleged offence under Section 387 of the IPC.

23. As regards offence under Section 506(2) of the IPC, it would be appropriate to refer to the said provision. The same read as follows :

> *"**506. Punishment for criminal intimidation.**—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*
>
> ***If threat be to cause death or grievous hurt, etc.**—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

24. A bare perusal of the second part of Section 506 of the IPC would show that the threat in question must be a threat to cause death or grievous hurt or to cause distruction of any property by fire or to cause an offence punishable with death or imprisonment for life. If the threat is not of such a level and it is a simple threat of causing injury to a person or his representative or property, the offence would fall within the first part of Section 506 read with Section 503 of the IPC.

25. In the present case, the threat in question was allegedly received by the informant on 7th September 2021 at Mumbai and the person who spoke to the informant, asked him to desist from doing certain acts, failing which the informant would face "trouble". This Court is of the opinion that even if the threat allegedly received by the applicants is to be accepted as it is, it does not qualify to be a threat to cause death or grievous hurt or to cause an offence punishable with death or imprisonment for

life. As noted hereinabove, the Division Bench of this Court has stayed the trial on this very issue. Therefore, the applicants have made out a *prima facie* case in their favour with regard to absence of the necessary ingredients of the offence under part (2) of Section 506 of the IPC.

26. Once the aforesaid conclusions are reached, it becomes clear that the applicants have made out a *prima facie* case that the alleged offences in the present case cannot be said to be punishable with imprisonment for three years or more. As a consequence, the invocation of MCOCA is also found to be *prima facie* unsustainable. Hence, the requirement of Section 21(4)(b) of MCOCA is satisfied.

27. Apart from this, there is substance in the contention raised on behalf of the applicants that there is considerable delay in registration of the FIR, as the alleged threat was received at Mumbai on 7th September 2021 and the FIR was registered more than 10 months later i.e. on 25th July 2022. There does not appear to be cogent explanation for the same. Apart from this, the contradiction pointed out by the learned Senior Counsel appearing for the applicants in the opening words of the statement of the informant, regarding his having resided in the house for the past six months and the date of the alleged incident i.e. 7th September 2021, when read in conjunction with the date of the FIR, does add substance to the contentions raised on behalf of the applicants.

28. The mere fact that the applicants have criminal antecedents ought not to prevent this Court to hold in their favour, for the reason that the Supreme Court in the aforementioned order passed in Special Leave Petition (Criminal No. 1815 of 2022) had found it apt to release the applicants on bail by imposing appropriate conditions.

29. Therefore, the present applications deserve to be allowed, subject to imposing appropriate conditions.

30. In view of the above, the applications are allowed in the following terms :

(a) The applicants shall be released on bail in connection with C.R. No. 109 of 2022 dated 25th July 2022 registered with Anti-Extortion Cell, Mumbai, on furnishing P.R. Bond of Rs.50,000/- each and one or two sureties in the like amount, to the satisfaction of the Special Court.

(b) The applicants shall report to the Anti Extortion Cell, Mumbai Police, on the first Monday of each month between 10:00 a.m. and 12:00 noon, during the pendency of the trial.

(c) The applicants shall appear before the Special Court conducting the trial on each and every date, unless specifically exempted by the Special Court.

(d) The applicants shall not tamper with the evidence of the prosecution and they shall not influence the informant, witnesses or any other person concerned with the case.

(e) The applicants, upon being released on bail, within one week, shall place on the record of the Special Court, as also office of the Anti Extortion Cell, the details of their Contact Numbers and residential addresses with updates in case of any change.

31. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicants shall be liable to be cancelled. It is also clarified that the observations made in this order are only for the purpose of disposal of the present bail applications. The Special Court shall proceed further in the matter without being influenced by the observations made hereinabove.

32. The applications are disposed of.

33. In view of the disposal of the Bail Applications, the pending Interim Applications also stand disposed of.

MANISH PITALE, J.