

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

BAIL APPLICATION NO. 502 OF 2024

Shankar Singh Jalamsingh Kharvat	...	Applicant
Versus		
State of Maharashtra	...	Respondent

Mr. Neeraj Yadav a/w Ms. Deepa Punjani and Ms. Sunayana Dhakkad for the Applicant.

Mr. Tanveer Khan, APP for Respondent.

Mr. Vishwas Babar, API, Valvi Police Station.

CORAM: MANISH PITALE, J.

DATE : 12th JUNE 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP.

2. The present application is filed seeking bail in connection with FIR No. 0015 of 2022 dated 4th January 2022, registered at Valiv Police Station, Vasai-Virar, for offences under Sections 395, 397, 212 and 120-B of the Indian Penal Code (IPC), as also under Section 31(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act). The applicant is one of the six accused persons, who have been charge-sheeted in the present case.

3. It is stated at the outset on behalf of the applicant that two co-accused persons i.e. Chetan Manohar Ghaytadke and Zahid Nissar Ahmed Shaikh, have been granted bail by this Court.

4. The learned counsel appearing for the applicant referred to the prosecution case, submitting that according to the allegations which led to the registration of the FIR, the victim was waylaid and cash was taken away from him on a highway leading to registration of offence under Section 395 of the IPC. The FIR was registered against unknown persons and thereafter, the applicant along with the other co-accused persons were arrested on 9th January 2022, the FIR having been registered on 4th January 2022 in respect of the alleged incident dated 3rd January 2022.

5. It is submitted on behalf of the applicant that in the present case, provisions of the MCOC Act could not have been invoked, even if the material available on record against the applicant is to be taken into consideration. It is submitted that chart available on record as part of the documents filed along with the charge-sheet, shows that the allegations against accused persons and the details of the criminal cases faced by them, do not satisfy the definition of organised crime syndicate and organised crime, as defined under the MCOC Act. It is submitted that although there is one more case registered against the applicant in the State of Rajasthan, pertaining to the year 2019, the present case is the only one in which the applicant is arrayed as an accused along with the other accused and accused No.1-Karansingh Rajput. It is submitted that a perusal of the chart shows that none of the accused persons have been arrayed as accused along with accused No.1 in the other offences registered against them which are placed on record along

with the charge-sheet. Thus, the basic requirement of invoking the MCOC Act is not satisfied in the present case. In this context, reference is made to the orders passed by this Court in favour of co-accused persons i.e. Chetan Manohar Ghaytadke and Zahid Nissar Ahmed Shaikh, in Bail Application Nos. 2663 of 2023 and 565 of 2023, on 2nd April 2024 and 18th October 2023, respectively. In the said orders, this Court took note of the aforesaid facts and reached the conclusion that the provisions of the MCOC Act did not appear to be satisfied for registration of offence under the said Act against the co-accused persons.

6. It is further submitted that even if the confessional statements of the co-accused persons are taken into account, at worst, the applicant is alleged to have shared a sum of Rs.10,000/- out of the amount that was allegedly looted from the victims on the highway. On this basis, it was submitted that no active role is even alleged against the applicant, thereby demonstrating a *prima facie* case in his favour for being enlarged on bail.

7. It is submitted that applicant was arrested on 9th January 2022, thereby indicating that he has remained behind bars about 2 years and six months and this factor also needs to be taken into consideration while disposing of the present bail application.

8. On the other hand, the learned APP submitted that the material on record sufficiently demonstrates that the applicant has criminal antecedents. A similar offence was registered against him

in the State of Rajasthan in the year 2019, thereby indicating that the applicant is a habitual offender. It was further submitted that the confessional statements of the co-accused persons clearly indicate the involvement of the applicant. Reliance is also placed on the fact that the applicant had shared the amount that was looted from the victims on the highway.

9. It was submitted that the provisions of MCOC Act were invoked upon sanction orders passed by the Competent Authority on 25th March 2022 and 4th June 2022, copies of which are placed on record for perusal of this Court. It was further submitted that merely because the co-accused persons were granted bail, this Court may not consider the present bail application.

10. This Court has perused the material on record with the assistance of the learned counsel for the applicant and the learned APP. The two co-accused persons have been already granted bail by this Court by the aforementioned orders. While granting bail to the co-accused persons, this Court has taken into account the provisions of the MCOC Act, particularly, definitions of organised crime and organised crime syndicate. After taking into consideration the material on record, this Court finds that the accused therein have been alleged to have committed only one offence with accused No.1, which pertains only to the instant case. On this basis, this Court concluded that the rigours of the provisions of the MCOC Act were not overcome.

11. It needs to be examined, as to whether the case of the applicant in the present application can be said to be similar to that of the co-accused persons, who have been granted bail. In this connection, the chart at pages 353 to 356 is relevant. The details of offences registered against the accused persons have been stated therein and a perusal of the same does indicate that other than the present case, in no other instance, have the accused persons including the applicant herein been arrayed as accused along with accused No.1-Karansingh Rajput. The only other case registered against the applicant is of the year 2019, pertaining to an incident in the State of Rajasthan.

12. In the face of the aforesaid material, the applicant has indeed made out a *prima facie* case to claim that the provisions of MCOC Act could not have been invoked against him.

13. In this context, perusal of the sanction order of the Competent Authority shows that the said authority has expressed satisfaction that the accused have committed offence with a new offender thereby creating crime syndicate. On this basis, sanction order is issued, granting approval for invoking the offences under the MCOC Act. This Court is of the opinion that the material available on record indicates that there is substance in the contention raised on behalf of the applicant, particularly, when the instant case is the only case in which the applicant has been arrayed as accused with co-accused No.1.

14. Apart from this, the FIR does show that it was registered against unknown persons for having allegedly waylaid and looted the victims on a highway. The confessional statements of the co-accused persons on record and the Memorandum under Section 27 of the Evidence Act, upon which reliance was placed by the learned APP do show that at various places it is stated that the applicant was given a sum of Rs.10,000/- from the cash amount allegedly looted at the time of the incident. In fact, in the confessional statement of co-accused-Bhavarsingh Dasana, it is stated that when he reached home on 3rd January 2021 in the night, only the applicant was at home cooking food. Thereafter, it is stated that the other co-accused persons reached the house and eventually, the cash amount was distributed, out of which Rs.10,000/- was given to the applicant to keep his mouth shut.

15. Considering the aforesaid material on record, this Court is of the opinion that the applicant has indeed made out a case for being enlarged on bail, particularly, when similarly situated co-accused persons have been granted bail by this Court.

16. In view of the above, the present application is allowed in the following terms :

- (a) The applicant shall be released on bail in connection with FIR No.0015/2022 dated 4th January 2022, registered with Valiv Police Station, on furnishing

PR Bond of Rs.1,00,000/- and one or two sureties in the like amount.

(b) The applicant shall report to the Valiv Police Station, on first and third Monday of each month between 11:00 a.m. to 1:00 noon, during the pendency of the trial. The applicant shall cooperate with the trial Court and attend the proceedings regularly.

(c) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

(d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with update, in case of any change.

17. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The application is disposed of.