

ORDER BELOW EXH. 28 IN MCOC CASE NO. 07/2015
CNR NO. MHTH01-008344-2015

This is an application by Prashant Mulya @ Annu for bail u/s. 439 of Cr.P.C. in C.R. No. I-196-2015 of Nerul police station for the offence u/s. 384, 385, 386, 387, 201 r/w.34 of IPC, Sec.3 and 25 of Arms Act, Sec. 37(1), 135 of Bombay Police Act and 3(1) (ii), 3(2) and 3(4) of MCOC Act, 1999.

2] Perused the application and say thereon. Heard Ld. Counsel Mr. Rishi Bhuta for applicant and Ld. A.P.P. Shri.More for the State.

3] Ld. counsel for the applicant submitted that, there are allegations of demand of some extortion amount from the informant against the accused persons. However, there is no material to show that, present applicant had ever demanded or received any amount. He further submitted that, the F.I.R. in question came to be lodged on 08/07/2015. The applicant came to be arrested on 15/07/2015. One Madan Kolamkar is the informant. As per prosecution case, the informant was inquired by one Nadim in the year-2014 as to whether he received any phone call from under world for demand of money. The informant said, no. Thereafter on 05/11/2014, the applicant received a phone call from International number wherein there was demand of Rs.2 Crores allegedly from Ravi Pujary. The applicant made a complaint in writing. Thereafter, he received security from police. He also installed CCTV cameras in his office, house as well as at entrance of the building. Subsequently, the applicant met one Dastagir who had previously received calls from gangster D.K.Rao. That, he negotiated with him and offered that, he would act as mediator in the case of the informant.

Thereafter, said Dastagir joined the conference call of the informant with one Haji and it was decided to pay Rs.75 lakhs as protection money. Out of said amount Rs.30 lakhs parted with by the informant. Thereafter, it is alleged that, the applicant called the informant 4 to 5 times on mobile and at office. So also, the accused had visited the office of informant that, co-accused Keshav Bhangе. That, Keshav Bhangе showed a pistol to the informant. However, there is no CDR showing the talks between the informant and accused, so also, there is no single CCTV footage showing entry of the applicant. There is no security guard or bouncers who had seen them. Admittedly, remaining amount of Rs.45 lakhs was never paid.

4] So also it is not disputed that, previous transaction was through Haji and the applicant has not received any amount. The police have seized just a motor-cycle from the applicant. Though, the statement of Dastagir was recorded, he has not made accused, the applicant is in custody for more than three and half years, however, there is no link between the applicant and co-accused or applicant with the incidence.

5] In Test Identification parade of the applicant, the secretary and receptionist of the informant have identified the applicant. However, she has deposed that she was asked to come inside at the instance of the informant. The C.D.R. shows the talks of co-accused with Haji, but not with the informant. There is delay of 8 months in lodging F.I.R. of initial incidence of demand. The applicant neither taken any money nor pointed any gun. It is difficult to understand as to how the pistol was carried in presence of bouncer and cars. The motor-cycle was never used in commission of any offence. Therefore, there is no seizure of incriminating material.

6] The applicant was never convicted for any offence. That, the sanction to prosecution came to be accorded after five months of invoking the provisions of MCOC Act. The co-accused 1,3 and 4 have already enlarged on bail under sec. 167(2) of Cr. P.C. Therefore, though the applicant is not claiming any parity with them, however, there is no practically no material against the applicant to show his involvement. Therefore, the section 21(4) of MCOC Act, would not be applicable to the case of applicant. In support of his case, the applicant has relied upon the decision of Hon'ble Bombay High Court in ***Pankaj Jagshi Gangar V/s. State of Maharashtra, in Criminal Writ Petition No.4639/2018.***

7] Ld. Spl. P.P. Shri. More for the State submitted that, the applicant had contacted the wanted accused Haji. He had even gone to the office of applicant with co-accused Vicky Aftab Alam. He has been identified in test identification parade by the witnesses. The applicant has also supplied SIM card by said Haji and handed over the same to accused No.4. The applicant has given confession under sec. 18 of MCOC Act and admitted his role in commission of alleged offence. The order under sec. 23(2) granting sanction to prosecute the accused, the application is having presumptive value.

8] That, the order of Pankaj Gangar is not on the bail application, but is on the point of challenge to the constitution validity of the provisions under sec. 23(1) (a) and 21(4) of MCOC Act. There was challenge to the order of the Commissioner of Police on the ground that, it was passed without application of mind and without making any reference to the investigation papers.

9] He submitted that, so far as allegations of CCTV footage are

concerned, they came to be installed after the threats by the applicant, therefore, obviously there is no record of the same. There is material against the applicant in CDR showing that, from 2 to 3 numbers of applicant, he used to call nearabout 6 to 7 cell phone numbers of co-accused Haji. Moreover, there is also material showing that, on the particular date mentioned in the F.I.R., the applicant had gone to the office of informant as tower location of mobile handset of applicant shows the location matching the office of the informant. In present case, there is no challenge to the order under 23(1) (a) or under 23(2) of MCOCA Act. Under such circumstances, the ratio laid down in said interim order of Hon'ble High Court may not be applicable to the present case and considering the material against the applicant as well as involvement and seriousness of the crime, the bail application of the applicant may be rejected.

10] In reply Ld. Counsel for applicant submitted that, the first threatening call received by the informant on -5/11/2014. He made complaint about the same on 15/11/2014 and as per F.I.R. after said complaint dated 15/11/2014, the informant installed CCTV cameras as well as deputed bouncers and security guards. However, there is no material substantiating the presence of applicant in the office of informant in the nature of CCTV footage.

11] I have gone through the decision in the case of Pankaj Jagshi Gangar in Criminal Application No.4639/2018. The decision in the said case is on the point of the material available before the Hon'ble Lordship in that particular case. So also, it was observed in the order that, by taking into consideration the entire material brought on record, the Hon'ble Lordships have satisfied that, there is no material on record to

prima-facie establish the culpability of accused and his involvement in commission of that organized offence, either directly or indirectly. However, in the present case, it has come on record that, the applicant had called the informant 4-5 times for payment of extortion money. He had also made phone calls as well as he has personally went to the office of the informant. The secretary of the informant has also identified the applicant in test identification parade.

12] Though, the Ld. Counsel for applicant invited my attention to the statement that, the informant himself asked the applicant to come inside his cabin, however, by that itself, it cannot be concluded that, that was voluntary act of the informant. So also, there is even confessional statement of applicant in which he has admitted that, he is involved in commission of alleged offence.

13] It has also come on record that, the applicant is a member of organized syndicate headed by Ravi Pujary. That, though the applicant has not allegedly received any amount directly from the informant, however either he has allegedly accompanied co-accused Aftab Alam for giving threats. The offence of extortion of amount which was committed for monetary gain by an organized crime syndicate, it is required to hold that, there is prima-facie material against the applicant. Only because, the remaining amount of Rs.45,00,000/- is not paid, would not absolve the applicant from the charges. Under the provisions of MCOC Act, the collective role of all the members of organized crime syndicate is required to be considered and merely an isolated role of the applicant cannot be considered by discarding the material against co-accused.

14] The applicant has though mentioned that, he has not shown

any pistol, however, when he has accompanied the co-accused Keshav Bhangre and said Keshav Bhangre had shown the pistol to the informant, the role of applicant is a member of organized syndicate to threaten the informant for extortion amount, has properly, prima-facie established.

15] Thought, the defence has taken stand of lack of CCTV recording showing presence of applicant, however, considering the submissions of Spl.P.P., the same cannot be said to be improbable. It is mentioned in the F.I.R. that, the CCTV cameras were installed after the threat as per suggestion of police. However, it is nowhere mentioned in the F.I.R. that, immediately after threat CCTV cameras were installed. Hence, the possibility of installation of cameras after the direct threat in office by the applicant cannot be ruled out. Moreover, the CDR of the applicant showing conversation with Haji as well as his alleged tower location at the office of informant also prima-facie supports the contention of prosecution about his involvement in present crime. Therefore, even as per the decision of Hon'ble High Court in above said case of Pankaj Gangar, the material on record prima-facie establishes the culpability of the accused and his involvement in commission of offence, i.e. organized crime. Therefore, applicant has failed to overcome the rigor of Section 21(4) of MCOC Act and consequentially, he is not entitled for bail. Hence, I pass following order:-

:: ORDER ::

The application is hereby rejected.

Thane.

Date- 15/03/2019

(V.Y. Jadhav)

Additional Sessions Judge-2, Thane.