ABC 2019 (I) 277 BOM
ACQUITTAL & BAIL CASES

a

HIGH COURT OF BOMBAY

(Prakash D. Naik, J.)

Criminal Bail Application No. 93 Of 2018

Decided on 1 November, 2018

b ***GANESH JANARDHAN GORE ALIAS GANYA*** ***- Applicant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

c ***Law Covered:- (A) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail —Indian Penal Code, 1860 — Sections 307, 384 387 r/w 34— Pistol fire — No injury caused —Threatened & fired from the close range — Intention of the accused — Held, intention was to issue warning and not to kill him as he had sufficient opportunity to shoot him from the close range— Conduct of***

d ***the accused — had not ran away from the place, after firing at the informant—The informant was not concerned with payment of alleged ransom amount— did not provoke the accused to fire at him— Co-accused who used to threaten the employer of the complainant for ransoms on bail — applicant in custody for a period of three years — chargesheet is filed — Bail granted. (Para 7)***

e ***(B) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Maharashtra Control of Organised Crime* (MCOC) *Act, 1999 — S 11 — Invoking of provisions under MCOCA — Chargesheet was in respect to quarrel between boys who reside in one locality and has nothing to do with organised crime — Bail granted. (Para 7)***

f ***Facts:-*** *Prosecution case is that informant, a watchman, was present on duty. One unknown person came to the place of incident and inquired from the informant about some one. At that time the accused removed the pistol from the bag and fired towards informant, however,*

g *informant dodged and saved himself. Accused then warned him by stating that concerned person shall give a call to some Sandeep and again fired towards informant. The accused than left the place, crossed the road and went away with his associate. The bullet hit the table. Informant narrated the incident to others. FIR was lodged u/ss 307, 384 387 r/w 34 of IPC. As per*

h *the case of the prosecution employer of the informant had received the threatening call and SMS from one Sandeep demanding ransom. During the investigation it was revealed that other accused was calling the employer of*

informant with his identity as Sandeep and had demanded the ransom. It was further alleged that accused had formed the organized syndicate and that they have committed offences, therefore provisions of MCOC Act were invoked. However, the Special Court held that there is no prima-facie evidence to arrive at conclusion that the ingredients constitute an offence punishable under MCOC Act and case was transferred to the regular Court.

In the present application for bail the honourable Bombay High Court granted the bail, considering that the intention of the accused was only to issue warning and not to kill him as he had sufficient opportunity to shoot him from the close range and bail had been already granted to co-accused.

Law of relief:- ***Fire from close range, no injury, intention of the accused was to issue warning and not to kill.***

Held:- On perusal of the First Information Report, it can be seen that accused had visited the place of incident. The informant was on duty as a watchman. Accused had fired from the close range at the informant and he could dodge and save himself. FIR further indicates that while leaving the place of incident, the accused issued warning and stated that inform (truncated) that he should contact Sandeep Patil and again fired. The bullet hit the table. Taking into consideration the situation as reflected in the First Information Report, *prima-facie* it appears that accused threatened the informant and intention was to issue warning and not to kill him as he had sufficient opportunity to shoot him from the close range. It is not the case that accused had ran away from the place, after firing at the informant. The informant was not concerned with payment of ransom amount. He did not provoke the accused to fire at him. This is not the stage to evaluate the evidence but the circumstances reflected in the FIR *prima-facie* warrants the aforesaid observations. The prosecution case is that co-accused used to threaten the employer of the complainant for ransoms in the name of Sandeep Patil. It is noted that co-accused are on bail. Prosecution has relied upon the antecedents against the applicant. It appears that while applying the provisions of MCOC, same cases registered against the applicant were taken into consideration. In the order of discharge passed by the Special Court reference is made to the said case. First case relates to the offence under Section 307 read with 34 of Indian Penal Code which is subject matter Sessions Case No. 967 of 2014 and the second case is registered for offence under Section 326, 323, 504, 141, 142, 143, 144, 147, 149 of Indian Penal Code. While dealing with the application for discharge

preferred by the applicant qua provisions of MCOC, the Special Court has observed that the case were registered on account of dispute between two groups. From the allegations made in second chargesheet relating to the aforesaid cases it appears that first chargesheet was in respect to quarrel between boys who reside in one locality and has nothing to do with organised crime. The applicant is in custody for a period of three years and chargesheet is filed. In the circumstances, case for grant of bail is made out. (Para-7)

Counsel:- ***For Applicant(s):*** *Mr. Tapan Thatte a/w Mr. Sagar Tambe, Adv.*

For Respondent(s): *Ms. A.A. Takalkar, Adv.*

JUDGMENT

PRAKASH D. NAIK, J.:- 1. This is an application for bail in connection with C.R. No. 240 of 2015. The FIR was registered on 15 th July, 2018 for offence punishable under Sections 307, 384 387 read with 34 of Indian Penal Code.

2. Prosecution case is that informant was present on duty on 15th July, 2015. At about 5 p.m one unknown person had come to the place of incident. He was carrying black colour bag. He kept the bag on table and inquired upon which the complainant asked the unknown person as to whom he was making inquiry. Upon inquiry, at that time the accused removed the pistol from the bag and fired towards informant, however, informant dodged and saved himself. Accused then warned him by stating that concerned person shall give a call to Sandeep and again fired towards informant. The accused than left the place, crossed the road and went away with his associate. The bullet hit the table. Informant narrated the incident to others. FIR was lodged vide C.R. No. 240 of 2015 for the aforesaid offences. It is the case of the prosecution that employer of the informant had received the threatening call and SMS from one Sandeep Patil demanding ransom during the investigation. It was revealed that other accused Mukund Ghadigaonkar was calling the employer of informant with his identity as Sandeep Patil and had demanded the ransom. It was further alleged that accused had formed the organized syndicate and that they have committed offences. The approval was obtained for invoking the provisions of MCOC Act which was followed by sanction and on completing investigation chargesheet was filed.

3. The applicant had preferred an application under Section 11 of MCOC Act before the trial Court by order dated 29th March, 2016. The Special Court has held that there is no prima-facie evidence to arrive at conclusion that the ingredients constitute an offence punishable under Section MCOC Act are made out against the accused and case was therefore transferred to the regular Court in accordance with Section 11 of MCOC Act.

4. Applicant then preferred an application for bail before the Sessions Court. The said application was rejected on 17th November, 2016.

5. Learned counsel for the applicant submitted that applicant is in custody since last more than three years. The applicant has been discharged from the provisions of MCOC Act. Offence under Sections 307 of Indian Penal Code is not made out. All other accused are granted bail. The complaint does not make out the ingredients to constitute the evidence of attempt to commit murder. The identification parade is faulty. It was conducted without adhering to the procedural safeguards.

6. Learned APP submitted that complainant has attributed specific overtact to the applicant. His involvement was established from the statement of the eye witnesses. Applicant had been identified by the witnesses. He was armed with pistol and he fired at the informant with an intention to commit murder. Thus, there is sufficient evidence against the applicant. Co-accused who were granted bail had played a different role and the applicant is not entitled for parity. I have perused papers. The incident had allegedly occurred on 15th July, 2015. The applicant was arrested on 17th July, 2015. The provisions of MCOC Act were applied against all the accused. However by assigning detail reasons, the Special Court has held that said provisions are not attracted. It was observed that said Acts were of individual nature and were not sufficient to invoke the provisions of MCOC Act. There is evidence of identification parade as alleged by the prosecution. However, it is debatable whether there was an intention to commit murder.

7. On perusal of the First Information Report, it can be seen that accused had visited the place of incident. The informant was on duty as a watchman. Accused had fired from the close range at the informant and he could dodge and save himself. FIR further indicates that while leaving the place of incident, the accused issued warning

and stated that inform (truncated) that he should contact Sandeep Patil and again fired. The bullet hit the table. Taking into consideration the situation as reflected in the First Information Report, *prima-facie* it appears that accused threatened the informant and intention was to issue warning and not to kill him as he had sufficient opportunity to shoot him from the close range. It is not the case that accused had ran away from the place, after firing at the informant. The informant was not concerned with payment of ransom amount. He did not provoke the accused to fire at him. This is not the stage to evaluate the evidence but the circumstances reflected in the FIR *prima-facie* warrants the aforesaid observations. The prosecution case is that co-accused used to threaten the employer of the complainant for ransoms in the name of Sandeep Patil. It is noted that co-accused are on bail. Prosecution has relied upon the antecedents against the applicant. It appears that while applying the provisions of MCOC, same cases registered against the applicant were taken into consideration. In the order of discharge passed by the Special Court reference is made to the said case. First case relates to the offence under Section 307 read with 34 of Indian Penal Code which is subject matter Sessions Case No. 967 of 2014 and the second case is registered for offence under Section 326, 323, 504, 141, 142, 143, 144, 147, 149 of Indian Penal Code. While dealing with the application for discharge preferred by the applicant qua provisions of MCOC, the Special Court has observed that the case were registered on account of dispute between two groups. From the allegations made in second chargesheet relating to the aforesaid cases it appears that first chargesheet was in respect to quarrel between boys who reside in one locality and has nothing to do with organised crime. The applicant is in custody for a period of three years and chargesheet is filed. In the circumstances, case for grant of bail is made out.

ORDER

i. Criminal Bail Application is allowed;

ii. Applicant is directed to be released on bail in connection with C.R. No. 240 of 2015 registered with Dadar Police Station, Mumbai on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

iii. Applicant shall attend concerned Police Station, Mumbai once in a month on every first Saturday between 10 a.m. to 12 noon till the conclusion of trial;

iv. Applicant shall not tamper with evidence;

v. Applicant shall attend on the dates of hearing before the Trial Court, unless exempted for some reasons;

vi. Criminal Bail Application stands disposed off.

Result:- Bail granted.

ABC 2019 (I) 282 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Prakash Deu Naik, J.)
Criminal Bail Application No. 2870 of 2018
Decided on 29 January, 2019

NILESH @ SACHIN MOHAN SAWANT ***- Appellant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Protection of Children from Sexual Offences Act — Sections 4, 6, 8 & 10 —Indian Penal Code, 1860 — Sections 363, 376(D) & 377— Victim had called the applicant at a garden & allegedly she had consumed liquor — under intoxication the incident of sexual assault had taken place — She did not make any grievance about incident to her mother — Medical evidence — no abnormality detected on the person of victim — No connection of the incident qua applicant with the incident qua co-accused — Investigation completed — & charge-sheet filed — Applicant is in custody from the date of arrest — Further detention of applicant is not necessary — Bail granted. (Para 5)***

Held:- I have perused the charge sheet. The victim has left house on 16th March 2018. The alleged incident had occurred on 17th March 2018. The incident of sexual assault qua the co-accused which had allegedly occurred on 20th March 2018 has no connection with the alleged incident. It is pertinent to note that the victim was dropped by the applicant as reflected in the statement of victim. She did not make any grievance about incident to her mother. The statement also indicates that the victim had called the applicant at Powai Garden and thereafter allegedly she had consumed liquor and while under intoxication the incident of sexual assault had taken place. On perusal