**(2011) 08 BOM CK 0203**

**In the Bombay High Court**

**Case No :** Criminal Bail Application No. 872 of 2011

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| Vishwanath Maranna Shetty | APPELLANT |
| Vs | |
| The State of Maharashtra | RESPONDENT |

**Date of Decision :** 10-08-2011

**Acts Referred:**

Maharashtra Control of Organised Crime Act, 1999 — Section 18, 18(6), 21(4), 4
Penal Code, 1860 (IPC) — Section 302, 34, 452

**Citation :** (2011) 08 BOM CK 0203

**Hon'ble Judges :** A.M. Thipsay, J

**Bench :** Single Bench

**Advocate :** Sandeep Pasbola instructed by Mr. A.G. Thool, for the Appellant; J.P. Kharge, APP, for the Respondent

## Judgement

A.M. Thipsay, J.—Heard Mr. Pasbola, the learned advocate for the applicant and Mr. Kharge, the learned APP for the State. I have gone through the bail application and the annexures thereto. I have also gone through the un-affirmed copy of the affidavit filed by the investigating officer which was tendered by Mr. Kharge, the learned APP.

2. The applicant is accused No. 9 in MCOC Case No. 10 of 2010. There are totally 11 persons, including the applicant, who have been arrested and arrayed as accused in the said case. Some more persons are shown as ''wanted'' and they are absconding.

3. The facts of the case, in brief, may be stated as follows:

i. One Farid Tanasha was murdered at his residence at Tilaknagar, Chembur, Mumbai, on 3rd June, 2010. A case in respect of the offences punishable under Sections 302 and 452 of the Indian Penal Code (IPC) read with section 34 IPC and with respect to the offences punishable under the Arms Act was registered at Tilaknagar Police Station. The DCB, CID, Unit No. 6, Mumbai also conducted parallel investigation in the said case. It was learnt by the said Unit that the murder was committed on the instructions of one Bharat Nepali (wanted accused) who is leader of an ''Organized Crime Syndicate''. One Vijay Shetty, (an another waned accused) is also a member of Bharat Nepali''s ''Organized Crime Syndicate''. Bharat Nepali, as well as the said Vijay Shetty are said to be out of India and are allegedly indulging into the organized crime, through the members of the syndicate.

ii. It was also revealed, as a result of investigation, that one Dattatray Bhakare (Accused No. 7)-a builder-was doing a certain project under a SRA Scheme at Chembur, Mumbai. Some members of the Co-op. Housing Society of occupants had some dispute with the said Dattatray Bhakare and, therefore, they had approached Farid Tanasha (who had some criminal background). Farid Tanasha had agreed to help those persons in their dispute with the said Dattatray Bhakare. When Dattatray Bhakare learnt about this, he contacted Bharat Nepali and Vijay Shetty for eliminating Farid Tanasha. The said Dattatray Bhakare allegedly financed a sum of Rs. 90 lakhs, which was paid to the said wanted accused persons through the arrested accused persons. It was also reveled, as a result of the investigation, that about Rs. 9 lakhs were given to the ''main shooter'' Mohd. Sakib Shahnawaz Alam Khan alias Raju (Accused No. 2), through the accused No. 6-Mohd. Rafique alias Shankar.

iii. So far as the present applicant is concerned, it is alleged that the said Accused No. 6 Mohd. Rafique @ Shankar, on the instructions of the wanted accused Vijay Shetty, used to collect certain amounts from the Applicant from time to time, and that the said accused No. 6 used to hand over such amounts to the accused No. 2 Raju @ Sakib. It is also alleged that the applicant had received a sum of Rs. 15 lakhs from the said accused No. 6 Mohd. Rafique @ Shankar on 28th May, 2011. The said accused No. 6 had, allegedly, paid to the applicant as per the instructions of the wanted accused Vijay Shetty. It is also alleged that somewhere in the third week of June, 2010, an amount of Rs. 6 lakhs was paid by an employee of the present applicant to the accused No. 10-Rajendra Chavan. Thus, in short, the substance of the allegation against the applicant is that part of the amount, which was given to the shooter for killing Farid Tanasha, had been passed on through the applicant to the actual shooter. This is the role attributed to the applicant.

4. It now needs to be examined whether this allegation against the applicant finds support from the material in the police report and accompanying documents.

5. The material against the applicant consists of the confession, made by the co-accused Mohd. Rafique @ Shankar (Accused No. 6), which has been recorded under the provisions of Section 18 of the Maharashtra Control of Organized Crime Act (MCOC Act). There is also a statement of the employee of the applicant, which indicates that the applicant had handed over some cash to the said employee in the third week of June, 2010, which cash was handed over by the said employee to accused No. 6-Mohd. Rafique @ Shankar.

 

6. As regards the confessional statement, Mr. Pasbola, the learned advocate for the applicant, pointed out that the said co-accused denied of having made any confessional statement as soon as he was produced before the Chief Metropolitan Magistrate, in accordance with the provisions of sub-section (5) of Section 18 of the MCOC Act. I have gone through the statements of the co-accused recorded by the Chief Metropolitan Magistrate u/s 18(6) of the MCOC Act. It appears that several important and crucial aspects of the matter were denied by the accused No. 6 as soon as he was produced before the learned Chief Metropolitan Magistrate. In my opinion, what the co-accused Mohd. Rafuqie @ Shankar stated before the Chief Metropolitan Magistrate cannot be ignored, though one may not discard the confessional statement allegedly made by him before the Deputy Commissioner of Police (DCP) altogether, on that count. At any rate, it will have a bearing on the question as to whether the confession in question was a voluntary one, which undoubtedly would need consideration during the trial.

7. It does appear that the employee of the applicant handed over some cash to the accused No. 6. However, even if this is accepted as a fact, the question is, whether this would be sufficient to show the involvement of the applicant in the offences punishable under the MCOC Act.

8. Mr. Pasbola contended that though there have been a number of telephonic interceptions during the investigation, the police have not been able to collect any record showing any telephonic contacts between the wanted accused Bharat Nepali and/or Vijay Shetty on one hand, and the applicant on the other. He submits that according to the investigating agency, such telephonic contacts between some of the co-accused and the said absconding accused are established. He also submitted that the intercepted telephonic conversations between the accused persons have been recorded, and that the volume of such recorded conversations is considerable. He submitted that, still, in none of the conversations, even the name of the present applicant has been reflected. That, this is so, is not disputed before me. It is also pointed out that the confessional statement of the accused No. 2 Mohd. Saquib Shahnawaz Alam Khan, who is alleged to be the actual shooter, has been recorded, but though he gives several details, he does not mention anything that would show the involvement of the applicant in the alleged offence. There is no reference to the applicant in the said confessional statement.

9. My attention was also drawn to the order passed by the learned Special Judge declining to grant bail to the applicant. It was pointed out that the learned Special Judge was also not satisfied with the allegation, that has been levelled against the applicant. In para-9 of the order of the Special Judge, it was observed that there was no material to indicate that the applicant had ever agreed with any of the co-accused to see that Farid Tanasha would be killed. The Special Court recorded this finding in this words-"In my opinion the applicant does not appear to have been privy to the killing of Farid Tanasha". Inspite of this, the learned Special Court did not grant bail to the applicant on the

reasoning that the applicant appears to have committed an offence punishable u/s 4 of the MCOC Act. It was observed that the statement of the employee of the applicant would indicate that the applicant had paid Rs. 6 lakhs to the accused No. 6. The Special Court observed that it was also indicated that an amount of Rs. 15 lakhs was collected by the co-accused Mohd. Rafique from the co-accused Dattatray Bhakare and that it was delivered to the applicant. The Special Court, thereafter, held that the material relied upon by the prosecution indicate that the present applicant had been working for the wanted accused Vijay Shetty. That the applicant had received ill-gotton money for the wanted accused Vijay Shetty and that, therefore, ingredients of Section 4 of the MCOC Act were attracted against the applicant.

10. In my opinion, considering the nature of material that is available against the applicant, it cannot be said that there are no reasonable grounds for believing that the applicant has not committed an offence punishable under the MCOC Act. How, the phrase ''reasonable grounds for believing the accused to be not guilty'', occurring in Section 21(4) of the MCOC Act is to be construed has been laid down by the Apex Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another, . It has been held that the said phrase cannot be interpreted in a manner so as to conclude that the Court must come to a positive finding that the applicant for bail has not committed an offence under the MCOC Act.

11. If the total material collected by the police during investigation is kept in mind, the absence of any material in the nature of intercepted telephonic conversations, against the applicant, is significant.

12. In my opinion, considering the nature of allegation against the applicant and the nature of material by which it is sought to be supported, a case for releasing the applicant on bail has been made out. Appropriate condition can be imposed upon the applicant while releasing him on bail, so as to ensure that he is watched by the investigating agency, thereby rendering it unlikely that he would commit any offence, while on bail.

13. The applicant is in custody since more than one year. There are no antecedents.

14. The applicant ordered to be released on bail in the sum of Rs. 1,00,000/- (Rupees one lakh) with one surety in like amount, on the condition that the applicant shall report to the office of the DCB, CID, Unit No. 6, Mumbai on every Wednesday and every Friday, between 11 a.m. to 12 noon, till the disposal of the case against him. The application is accordingly disposed of.