

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1207 OF 2015

Deepak @ Lala Bindyachal Prajapati ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Nitin Sejpal, for the Applicant.

Mr. S.S. Pednekar, APP for Respondent – State.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **AUGUST 04, 2015**

P.C.:

. The application is moved for bail as the applicant/accused is facing charges for the offences punishable under Sections 395 and 341 of the Indian Penal Code and under Section 25(1)(3) of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999(“MCOC”) in C.R. No. I-18 of 2012 registered with Mangaon police station, Raigad.

2. It is the case of the prosecution that one Nilam Mehta gave information to police on 8th February, 2012. It is her case that

her husband owns a grocery shop where kerosene is also sold. On 7th February, 2012 at about 10.05 p.m two persons arrived at their residence and demanded kerosene. Thereafter, another third person arrived there. She allowed them to enter the house. At that time, they threatened her of her life on the point of pistol. Their faces were covered with handkerchief. They took away gold ornaments and cash of Rs. 1,20,000/-. The robbers took away the total amount of Rs. 5,60,000/-. Thereafter she gave complaint. The applicant/accused was arrested on 12th February, 2012. He is in custody since then. Hence, this bail application.

3. The learned counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused. The applicant/accused has not committed any offence. The applicant/accused is arrested only on suspicion that he is the member of one Viru Singh gang. He further submitted that there is no T. I. parade and no recovery made at the instance of the applicant/accused. The applicant/accused is arrested only on the basis of confession statement made by the two co-accused Pravin and Vicky. The learned counsel read over the relevant portion of the confession

of the two co-accused wherein they stated that about the applicant/accused as a member of the gang. He submitted that there is no evidence to show that the applicant/accused has participated in the said offence or he is related with it in any manner.

4. The learned prosecutor opposed the application. He submitted that this is the case under MCOC Act and the charge sheet is filed against the gang of Viru Singh. He submitted that there is evidence of confession statement of the co-accused. There are antecedents against the applicant/accused. Hence, bail may not be granted.

5. Perused the first information report, confession statement and the other documents. As submitted by the learned counsel for the applicant/accused, it is necessary to either have recovery of articles at the instance of the applicant/accused and or there should be some evidence pertaining to identification of the applicant/accused. However, in the present case, no such evidence is seen. Moreover, there is nothing on record to show that the applicant/accused was related with the commission of the offence of the said robbery. He

may be a member of the gang of Viru Singh which is organized crime syndicate and may be having criminal antecedents, however, *prima facie* unless it shows that the applicant/accused is involved in the continuous unlawful activity as per Section 2(e) of the MCOC Act and has committed some cognizable offence, he can not be said to have been engaged in the continuous unlawful activity or organized crime under Section 2(e) of the MCOC Act. Thus *prima facie* I am of the view that the bar under Section 21(4) of the MCOC Act will not come in the way as there is no sufficient material placed on record that the applicant/accused is involved in the commission of the said offence. Hence, though there are antecedents, the applicant/accused is entitled to bail.

6. Hence, I grant bail as under:

- a) The bail application is allowed.
- b) The applicant/accused be enlarged on bail upon furnishing PR. Bond in the sum of Rs. 50,000/- (Fifty Thousand) with one or two surety/s in the like amount.
- c) He shall not tamper with the evidence and shall not pressurize the complainant or other prosecution witnesses.

- d) He shall not indulge into any criminal activity, while on bail.
- e) He shall make himself available and attend all the Court dates regularly.
- f) He shall not abscond and furnish his permanent residential address to the police station along with the address proof.
- g) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

7. Bail application stands disposed of on above terms.

(MRS.MRIDULA BHATKAR, J.)