

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1896 OF 2014

Vikram Haribhau Bhosale

... Applicant/
(Ori. Accused No.10)

vs.

The State of Maharashtra

... Respondent

WITH
BAIL APPLICATION NO.1899 OF 2014

Khairabai Vikram Bhosale

... Applicant/
(Ori. Accused No.9)

vs.

The State of Maharashtra

... Respondent

Mr. R.D. Suryawanshi, for the Applicants.
Mr. Y.M. Nakhwa, APP for Respondent – State.

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

DATE: **JUNE 17, 2015**

P.C.:

. These two bail applications are heard together and decided by a common order as both the husband and wife are facing prosecution for the offences punishable under Sections 396, 397, 120(B), 201 and 412 of the Indian Penal Code and Sections 3(1)(2) and 3(2)(3)(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC).

2. One Anant Parkar one of the trustee of Dive Agar Suvarna Ganesh Mandir Trust, Dive Agar, Tal. Shrivardhan, Dist. Raigad gave information to police that on the night intervening 23rd and 24th March, 2012 there was dacoity in Ganesh Temple of Dive Agar and a gold mask of Lord Ganesh weighing 1.315 kg. and other golden ornaments weighing 225 gms. valued Rs. 11,20,000/- were robbed.

3. It is the case of the prosecution that while committing dacoity the accused persons have assaulted two watchmen who succumbed to the injuries due to hemorrhagic shock with injury to the brain and head. The applicant/accused Khairabai (original accused No. 9) was arrested on 28th April, 2012 and Vikram (original accused No. 10) was arrested on 5th May, 2012. Both of them are in custody since last three years. Hence, these applications.

4. The learned counsel for the applicants/accused has submitted that both the applicants/accused are falsely implicated in this case. The applicants/accused are innocent and they are implicated in this case only on the basis of suspicion. The learned counsel further submitted that applicants/accused are parents of the principal accused and co-accused and therefore they are put behind the bars. He further submitted that other

circumstance which was considered as an incriminating evidence was the recovery of some gold from accused Khairabai weighing only 15 gms. The statements of co-accused i.e. Vijay Kale and Anant Raimokar, the jewellers which are recorded under Section 18 of the MCOC Act is another circumstance shown against the accused. He further submitted that there is only one offence registered against applicant/accused Vikram Bhosale and charge sheet of the same is not filed by the investigating officer but, in this bail application by way of an affidavit, the reference is made. He submitted that there is no evidence showing that the applicants/accused have committed any offence of robbery with the co-accused.

5. He further submitted that accused Khairabai has no criminal record. He submitted that for want of the evidence the applicants/accused are to be released on bail. He further submitted that the age of the applicants/accused is also to be counted as the applicant Vikram is 68 years old and Khairabai is 60 years old and yet there is no progress in this case before the trial Court. He submitted that the ingredients of section 2 and 4 of the MCOC Act is in respect of showing the continuous illegal activities of the accused and the same are not proved *prima facie* against the applicants/accused. Hence they are entitled to be released on bail.

6. The learned prosecutor opposed the bail applications. They relied on the statements of witnesses. They also relied on the charge sheet filed against the gang of Navnath Bhosale. The learned prosecutor pointed out that the gang is headed by principal accused Navnath Bhosale who is one of the sons of the applicants/accused. It is submitted that the applicants/accused are not apprehended only because they are parents of the principal accused and co-accused but they are the active member of the gang of Navnath Bhosale and they have participated in this crime and therefore they cannot be released on bail. It is further submitted that there is sufficient evidence against the applicants/accused showing that they are the members of the gang and they were aware about the commission of the offence and have also helped the dacoits. It is further submitted that apart from the statements of Vijay Kale and Anant Raimokar, the prosecution relied on the statements of driver Balu and Sachin and so also the owner of Bolero jeep Sanjay Thorat as the said vehicle was hired by accused Khairabai after the incident.

7. Perused the first information report, statements of witnesses Balu, Sachin and Sanjay. The statements of these witnesses discloses that on 22nd April, 2012 accused Khairabai had contacted the person for the use of Bolero jeep for transportation of the co-accused. The confessional

statements are admissible under Section 18 of the MCOC Act and hence it can be looked into at the stage of deciding the bail application as to whether any incriminating role is played by the applicants/accused or not. The submissions of the learned counsel for the applicants/accused that neither Vijay Kale nor Anant Raimokar, the co-accused have attributed any incriminating role to accused Khairabai and Viram. It appears from the statements of both, that the applicants/accused *prima facie* had knowledge about the commission of the offence and were active in making arrangement for the transportation and also disposing the stolen property i.e. melting the pieces of Lord Ganesh idol and making gold balls out of the same. Two watchmen were killed in this dacoity. Their postmortem notes *prima facie* shows that they died due to assault on head. Under such circumstances, there is evidence *prima facie* showing the involvement of the applicants/accused in this offence. The learned prosecutor has pointed out that there are 35 offences of the similar nature are registered against the said gang.

8. Under such circumstances, considering section 21 of the MCOC Act, I do not satisfied that the applicants, if released on bail, will not commit similar offence being habitual and there is every possibility that they will jump the bail. Hence, I reject the bail applications.

9. The learned Principal Judge, Raigad-Alibag is requested to take note that the case is pending in the Court since last three years and therefore it is necessary to take steps to expedite the matter. The learned Judge presiding over this case to frame charge and commence the trial and dispose it till 31st March, 2016.

(MRS.MRIDULA BHATKAR, J.)