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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4746 OF 2016

Nandu s/o Pandharinath Sirsath,
Age: 23 years, Occ: Nil,
R/o. Uttamnagar, Galli No.5,
Jawhar Colony, Aurangabad. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Usmanpura Police Station
District Aurangabad. ..RESPONDENT

Mr N.S. Ghanekar, Advocate for applicant;
Mr S.D. Ghayal, Add. Public Prosecutor for
respondent

CORAM : A.S. CHANDURKAR, J.

DATE : 22nd NOVEMBER, 2016

ORAL ORDER :

Heard.

2. By the present application, the applicant seeks release pursuant to his arrest on 23rd November, 2015 in connection with Crime No. 257 of 2015 registered with Osmanpura Police Station, Aurangabad, for offences punishable under Sections

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458, 395, 392 of the Indian Penal Code and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999.

3. As per first information report lodged by one Mistrilal Bardiya dated 15th October, 2015, when he was alone at home on the previous day, one person aged about 30 to 40 years has entered his house, after which three more persons of same age group came there and had stolen amount of Rs.1,05,000/- in cash and Rs.50,000/- in form of ornaments. In the said report, it was stated that further details regarding stolen ornaments would be given after his daughter would verify the same.

4. After the applicant was arrested on 23rd November, 2015, an amount of Rs.2000/- came to be seized on memorandum dated 26th November, 2015. On that basis, offence under the Maharashtra Control of Organized Crimes Act, 1999 came to be added. The supplementary statement of the informant was recorded on 26th December, 2015 and he gave details

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of certain additional ornaments that were stolen. Subsequently on 28th December, 2015 recovery of some more silver ornaments worth of Rs.1000/- came to be shown.

5. The learned Counsel for the applicant submitted that after arrest of the applicant, the test identification parade was conducted, in which the applicant was not identified. He submitted that the ornaments which were alleged to have been stolen have been identified in an incorrect manner and by not keeping identical articles along with alleged stolen articles. He then submitted that there was only one crime being no. 158 of 2012 that was pending against the applicant, however, the prosecutrix therein had denied the commission of offence punishable under Section 376 of the Indian Penal Code. He further submitted that other members against whom offence under the Maharashtra Control of Organized Crimes Act, 1999 had been registered, were not accused in Crime No. 158 of 2012. Further, as per charge sheet, the daughter of first

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informant has not been shown as a witness. He has referred to the order dated 3rd May, 2016 passed by this Court in Criminal Application No. 1637 of 2016 under the same crime in relation to other accused.

6. The application is opposed by learned Additional Public Prosecutor. According to him, though the applicant was not identified in the test identification parade, ornaments in question had been seized from his custody. He submitted that as the applicant was member of gang, he was not entitled to be enlarged on bail.

7. Perused the charge sheet along with the order passed by this Court in Criminal Application No. 1637 of 2016. It is not in dispute that the applicant was not identified in the test identification parade. List of ornaments which were stolen had not been initially given by the informant. The said list was given subsequently by recording supplementary statement. However, the identification of stolen ornaments appears to have

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been made by not keeping similar articles along with the recovered articles. The statement of prosecutrix in Crime No. 158 of 2012 also does not implicate the applicant herein. The value of ornaments recovered at the instance of the applicant is stated to be worth of Rs.1000/-. This Court in Criminal Application No. 1637 of 2016 has in somewhat similar circumstances released the accused therein on bail.

8. In view of aforesaid, I am inclined to allow the present application. Accordingly, the applicant is directed to be released on bail, pursuant to his arrest in Crime No. 257 of 2015 registered with Osmanpura Police Station, Aurangabad, for offences punishable under Sections 458, 395, 392 of the Indian Penal Code and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999, on his furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.

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The applicant shall not tamper with the material collected by the prosecution and shall make himself available during the trial.

It is clarified that present observations are only for the purpose of considering prayer for grant of bail in this bail application.

9. Criminal Application is allowed on above terms and same is disposed of.

(A.S. CHANDURKAR, J.)

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