

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 211 OF 2015

Rohit Shashikant Shewale alias

Rohit Sanyasi Mupnar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Tejas Hilage, Advocate for the applicant.

Mrs. Rutuja Ambekar, APP for the State.

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

DATE: **30th March, 2016.**

P.C.:

This Application is moved for bail, as the applicant/accused is facing charges under sections 395 of the Indian Penal Code and under sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

2. It is the case of the prosecution that the applicant/accused is a member of gang of Ghanshyam Babu Yadav, who has been indulging in the offence of robbery and many cases are filed against Ghanshyam Babu Yadav alias Ghanshyam Sai Babu Pal along with Manoj Ramprasad Yadav. It is the case of the prosecution that the applicant/accused along with Ghanshyam Yadav is involved in three cases of robbery.

3. As per the case of the prosecution, on 18th July, 2012 complainant Balu Mahadu Talpade was on duty as a watchman of BNN College,

Dhamankar Naka, Bhiwandi. At around 2.30 a.m. he heard some noise at the door, so he opened the door and peeped out. At that time, two persons pushed him and entered the office and thereafter other three persons followed them. Two persons closed his eyes with handkerchief and other persons tied his hands. It is the case of the complainant that he can see those persons as the lights of the office was on. Thus, these persons ransacked the office and took away cash of Rs.1,65,000/- from the cash box. Hence, the offence was registered at C.R. No. I-256 of 2012 at Narpoli Police Station, Bhiwandi on 19th July, 2012. The applicant/accused was arrested on 28th November, 2012 though he was arrested earlier for some other offence on 30th October, 2012. Hence, this Bail Application.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused was not present at the time of incident. He has not committed any offence. There is no evidence against the applicant/accused. The applicant/accused is taken in custody in this C.R. when he was already in the custody of the police at the instance of statement of the co-accused. He further submitted that today no case is pending against the applicant/accused. He further submitted that Rs.5,000/- was recovered from the house of applicant/accused.

5. Learned APP opposed the Bail Application. She submitted that the applicant/accused is charged under MCOC Act. The applicant/accused was arrested along with co-accused in similar type of offence under sections 392, 395 of the Indian Penal Code. She pointed out that the applicant/accused was present at the time of incident. The complainant has given a particular role of tying his hands with leather belt to the applicant/accused. The statement of co-accused Ghanshyam Yadav and Manoj Yadav are recorded under section 18 of the MCOC Act and in the said statement, they have attributed the role of tying the hands of the complainant to the applicant/accused. She submitted that the police have collected CDR of the cell phone of applicant/accused.

6. Perused the FIR, papers produced by both the parties and the documents on record. This being the MCOC case, the Bail Application is to be decided after considering section 21 of MCOC Act. The applicant/accused is shown as a member of the gang of Ghanshyam Yadav. The involvement of applicant/accused is mainly due to the statement of co-accused which is recorded under section 18 of MCOC Act which is admissible. However, at this stage, apart from the statement, it is necessary to find out whether any reliable evidence is there or not. There is recovery of Rs.5,000/- from the house of the accused. The applicant was arrested in

some other C.R. on 30th October, 2012 and thereafter he was taken in custody on 28th November, 2012. The cases which are shown pending against the applicant/accused as per the affidavit of Investigating officer Ravindra V. Bhosale which is filed on 10th February, 2015, as per the submissions of learned counsel for the applicant, the applicant/accused is acquitted from all the 3 cases. The learned counsel produced the copies of the judgment of the said cases wherein the applicant/accused is acquitted. The complainant was the only eye witness, however, his eyes were tied when the actual incident of robbery has taken place. The complainant did not identify the applicant/accused in Test Identification Parade. Moreover, in the statement of co-accused Manoj Yadav which is produced here wherein he has stated that on 18th July, 2012 co-accused Rafiq introduced Rohit to him. Considering this evidence and the charges under section MCOC Act, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- i) Application is allowed.
- ii) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;
- iii) The applicant/accused shall not indulge into any offence much

less the offence against property and human body as mentioned in the Indian Penal Code.

iv) The applicant/accused shall not keep any contact with co-accused in any manner.

v) The applicant shall make himself available and attend all Court dates;

vi) The applicant shall not abscond and furnish his telephone number and address to the police along with address proof.

vii) The applicant shall not leave India without the prior permission of the Court.

viii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)