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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1977 OF 2015**

Sandesh Madhukar Kadam

...Applicant

Versus

State of Maharashtra

...Respondent

Mr.Kuldeep U. Nikam, for the Applicant

Ms. G.P.Mulekar, A.P.P for the Respondent-State

Police Sub-Inspector – Amol B. Shinde, Vita Police Station, Sangli.

CORAM : REVATI MOHITE DERE, J.

DATE : 18th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No.95 of 2014, registered with the Vita Police Station, Sangli for the alleged offences punishable under Sections 394, 397, 120B, 457 r/w 34 of the Indian Penal Code and Sections 3(1) (II), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999.
3. Learned Counsel for the Applicant submits that the

complaint/FIR has been lodged as against 3 unknown persons, whose description has been set out in the FIR. He submitted that the applicant is not amongst the 3 persons who are alleged to have come to the house of the complainant or the persons who are alleged to have assaulted the complainant and others. He submitted that the FIR was lodged on 4th May, 2014 and for the first time in the supplementary statement which was recorded on 26th August, 2014, the name of the present applicant is disclosed. He submitted that in the said supplementary statement dated 26th August, 2014 of the complainant – Shankar P. Kadam, it has come that he had learnt from the police that the present applicant had told Krishna Dev Kadam that he would not spare him and that Krishna Dev had disclosed to him about the same.

4. According to the learned counsel for the applicant for the first time in the statement of Sachin Chhagan Khade dated 2nd September, 2014, it has come that co-accused – Raju Shaikh had disclosed to him, that there was hidden treasure in Krishna Dev Kadam's house and that the applicant had shown Krishna Dev's house to co-accused – Vinayak Kale and Pravinkumar Kale. He submitted that apart from the fact, that the said

statement was hearsay, Sachin Khade in his statement recorded under Section 164 of Cr.PC, which is on page 121 of the application, had not named the applicant at all. He submitted that the applicant has no antecedents and that there is no material to show that the applicant was a part of the conspiracy to commit the alleged offences.

5. Learned APP does not dispute the fact, that there are no antecedents, qua the present applicant nor does she dispute the fact, that in the 164 statement of Sachin Khade, there is no reference to the present applicant. Learned APP is unable to show any other material to connect the applicant with the alleged offence.

6. Perused the charge-sheet. Admittedly, the applicant was not amongst the persons who were present at the spot at the time of the alleged incident or amongst the persons who assaulted the complainant and others. It appears from the prosecution case, more particularly from the statement of Sachin Khade, which is recorded under Section 161 of the Cr.PC on 2nd September, 2014 that he had learnt from co-accused – Raju Shaikh that the present applicant had disclosed to co-accused – Vinayak Kale and

Pravinkumar Kale that there was hidden treasure in Krishna Dev's house and had shown Krishna Dev's house to the said persons. The said fact disclosed in the 161 statement is conspicuously absent in the 164 statement of the very same witness, Sachin Khade, which was recorded on 2nd September, 2014. Sachin Khade in his 164 statement, has neither named the applicant nor disclosed the aforesaid. There are no antecedents, qua the applicant.

7. Considering the aforesaid, prima-facie, there are reasonable grounds to believe that the applicant is not guilty of the alleged offences. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) An undertaking to the aforesaid clauses ii) to v) shall be filed by the Applicant, in the Trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.