

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1378 OF 2017

Sabajit @ Raju Sidhahari Pal ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

BAIL APPLICATION NO.1377 OF 2017

Rafique Mainuddin Sheikh ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Tejas Hilage, Advocate for the Applicants.

Ms.Veera Shinde, APP for the Respondent/State.

Mr.Mujawar, ACP East Region, Bhiwandi is present in person.

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CORAM : A.M.BADAR J.

DATED : 16th NOVEMBER 2017.

P.C. :

1 Applicant Sabajit @ Raju Sidhahari Pal in Bail Application No.1378 of 2017 and applicant Rafique Mainuddin Sheikh in Bail Application No.1377 of 2017 are accused in MCOC Case No.13 of 2012 pending on the file of the learned Special Judge, Thane for offences punishable under Section 395 of the Indian Penal Code as well as 3(1)(ii), 3(2) and 3(4) of the

Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as 'MCOC Act' for the sake of brevity). By these applications, they are seeking their release on bail.

2 Heard the learned Advocate appearing for the applicants/accused. He argued that Sabajit @ Raju is younger brother of main accused Ghanshyam Yadav and, therefore, he is falsely implicated in the crime in question. There is no evidence to infer his complicity in the crime in question. The learned Advocate further argued that nothing was recovered from applicant Sabajit @ Raju. He is not identified by any of the prosecution witnesses. Co-accused Rohit is already released on bail by this Court and, therefore, applicant Sabajit @ Raju is also entitled for bail. The learned Advocate further argued that at the time of the incident, Sabajit @ Raju was under arrest of police in the incident of Kolasewadi.

3 So far as applicant Rafique Sheikh is concerned, the learned Advocate argued that applicant Rafique Sheikh has been acquitted in all cases by the competent Court. In the case in hand, he was arrested in transfer warrant and is falsely implicated in the crime in question.

4 The learned Additional Public Prosecutor opposed the application by submitting that applicant Sabajit is also involved in

the crime in question as there was telephonic conversation between him and main accused Ghanshyam Yadav. The learned Additional Public Prosecutor argued that at the instance of applicant Rafique, recoveries are effected and he is also identified by the First Informant as well as other witnesses.

5 I have carefully considered the rival submissions and also perused the entire charge-sheet.

6 The incident is in respect of dacoity at B.N.N. College, Bhiwandi in the night intervening 18/07/2012 and 19/07/2012. As per version of First Informant Balu Talpade – a watchman of the College at about 2.30 a.m. of that night, when he opened the wooden door of the college, five dacoits forcibly entered in the college and tied him after covering his eyes by handkerchief. Then, he heard sound of breaking cupboards in the office of the college. After the dacoits left the spot, he managed to get assistance of the other staff of the college residing in the vicinity. First Informant Balu reported that cash box containing cash amounting to Rs.1,65,000/-, one mobile and other articles were looted in the dacoity committed by the dacoits.

7 During investigation of the crime in question, on the basis of confessional statement of Rafique Sheikh, on 06/08/2012, iron cash box, cheque book containing used cheques of

B.N.N.College, Fixed Deposit Certificate issued by the bank in respect of said college as well as 28 vouchers regarding all financial transaction of Junior and Senior College came to be recovered and it is also seen that amount of Rs.7000/- came to be recovered at his instance during the course of investigation. He is also identified by the prosecution witnesses as one of the dacoit. *Prima facie*, it is seen that after complying with all necessary formalities, penal provisions of MCOC Act are applied to the case in hand and there is evidence to connect the applicant to the crime in question.

8 In this view of the matter, considering the provisions of Section 21 of the MCOC Act, no case for bail is made out by applicant Rafique Sheikh and, therefore, his application needs to be rejected.

9 So far as applicant Sabajit is concerned, the case of the prosecution against him is to the effect that he had taken accused persons near the spot of the incident in the four wheeler vehicle. The prosecution case against him rests solely on the confessional statement of co-accused Manoj Ramprasad Yadav. Evidence against applicant Sabajit is in respect of telephonic conversation by him with his brother i.e. main accused Ghanshyam Yadav.

10 This Court had an occasion to consider case of co-

accused Rohit Shewale @ Rohit Mupnar. While deciding the same, by an Order dated 30/03/2016 passed in Bail Application No.211 of 2015, this Court (Coram : Mrs.Mridula Bhatkar J.) pleased to consider evidence against accused Rohit and he is directed to be released on bail. Case of applicant Sabajit Yadav is identical with the case of Rohit and, as such, on the principle of parity, applicant Sabajit deserves to be released on bail.

11 In the result, following Order :

- (i) Bail Application No.1377 of 2017 is rejected.
- (ii) Bail Application No.1378 of 2017 filed by applicant Sabajit @ Raju Sidhahari Pal is allowed.
- (iii) Applicant Sabajit @ Raju Sidhahari Pal accused in MCOC Case No.13 of 2012 pending on the file of the learned Special Judge, Thane for offences punishable under Section 395 of the Indian Penal Code as well as 3(1)(2), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999, is directed to be released on bail on his executing P.R.Bond in the sum of Rs.50,000/- and on furnishing one or two surety in the like amount.
- (iv) As a condition of this Order, the applicant Sabajit shall not tamper with the prosecution evidence.

- (v) The applicant/accused Sabajit should cooperate the learned trial Court in expeditious disposal of old trial against him by attending each and every date meant for recording of evidence in order to avoid protraction of the trial of the case wherein other accused are under-trial prisoner. Breach of this condition shall entail cancellation of bail granted to applicant Sabajit.
- (vi) Applicant should not repeat commission of any offence while enjoying liberty under Order of this Court.

(A.M.BADAR J.)