

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.657 OF 2018

Mr. Madhav @ Mahadev Laxman Kale Applicant

Vs.

The State of Maharashtra Respondent

Mr. Aniket U. Nikam a/w Mr. Aashish Satpute I/by Mr. Kunal D. Ambulkar for the Applicant.

Mr. Prashant Jadhav, APP for the State.

Mr. S.R. Sawant, PSI, Crime Branch, Navi Mumbai present.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 25th July, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 7th April 2017 in Crime No.6 of 2017, registered at Khandeshwar Police Station, for the offences punishable under Sections 395, 341, 342, 412,120(B) of

the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of MCOC Act, on the basis of the report of one Shri. Pramodkumar Jagdish Thakur, who happens to be Manager of R.T.C. Company.

3 It is the case of the prosecution that on 4th January 2017, a Container carrying about 640 boxes of cigarettes manufactured by R.T.C. Company of different brands was ransacked and looted after it had left Ranjangaon MIDC. The incident is dated 5th January 2017 at about 6.30 am., when the container was passing through Asudgaon. The truck was looted by some persons, who had followed the truck in a Scorpio jeep. The accused who had looted the truck were arrested. The gang leader, Amol Balasaheb Dushing, who had looted the said truck alongwith co-accused was arrested on 22nd March 2017. On 29th March 2017, a memorandum of accused Amol Dushing was recorded under Section 27 of the Indian Evidence Act. He had agreed to show the godown, where the cigarettes were “Stored for Sale”. Accused Amol Dushing had led the investigating agency to the godown of the present applicant, who happens to be the owner of Rice Mill and has his own godown. The police party

alongwith Amol Dushing visited the godown. Without any restraints, he had opened the godown.

4 It is pertinent to note that no cigarette boxes were found in the godown. It is further pertinent to note that at that stage i.e. on 29th March 2017, the applicant was not arrested. Neither the applicant was issued a notice under Section 41-A for recording the statement, as a suspected accused, who must have received the stolen property. Thereafter on 7th April 2017, the applicant was arrested. For the reasons best known to the investigating agency from 29th March 2017 to 7th April 2017, there were no steps taken by the investigating agency to enquire into the involvement of the present applicant in the alleged racket, which is subsequently the principal allegation at the time of filing of the charge-sheet.

5 Learned counsel for the applicant submits that after arrest of the applicant i.e. on 15th April 2017, the investigating

agency has recorded the statement of one Nilesh Madanlal Piccha. He has disclosed to the Police that in December 2016, Lijjo Takekar had passed on a message to him allegedly given by the present applicant calling upon Nileshkumar Piccha and others for a meeting. Those people who were with the present applicant had informed Nileshkumar Piccha that there is a consignment of cigarettes, which would be received shortly. The consignment is of a Minister in connection with demonetisation and that the present applicant would pass on the said cigarettes and also issue receipts to that effect. On 7th January 2017, the witness had received a phone call from Lijjo Takekar informing him that the goods are received and that they are stored in the godown of the present applicant. That the said witness had received 188 cigarette boxes from the present applicant. However, according to him, the bill was not received and therefore on 10th January 2017, he had returned the said boxes to the present applicant.

6 Learned APP vehemently submits that the applicant is a member of the racket. That he had conspired to sell off the goods and accordingly had received on the stolen goods. The most important aspect is that according to Nileshkumar Piccha in December, the present applicant had informed them that they would be receiving cigarette boxes which in fact belongs to a 'Minister'. The date when the said truck/container was looted is 5th January 2017 and therefore it is not known as to whether the boxes that were transferred were the said boxes, which were stolen from the consignment were received and further sold, as there is no identification by the first informant in respect of the same brand. The said boxes are identified by the Manager from the goods which were seized from the co-accused. Another glaring factor is that the learned APP has drawn attention of this court to the confessional statement of one of the co-accused namely Shahrukh Rajjak Shaikh who was arrested on 2nd November 2017. He was in custody till 13th November 2017 and on 9th November 2017, the confessional statement of the accused was recorded by D.C.P. Zone II, Panvel and

after recording of the said statement, the accused was sent back to the police custody.

7 It is pertinent to note that on 13th November 2017, accused Shahrukh Rajjak Shaikh was produced before the learned Magistrate and at the first instance, he had retracted the said confession. Accused Shahrukh Shaikh was arrested on 2nd November 2017, whereas the present applicant was arrested on 7th April 2017. Hence, it would not be appropriate to rely upon the statement of the co-accused as there is violation of mandatory provisions of Sections 18, 4,5 and 6 of MCOC Act. The applicant has no criminal antecedents. The applicant is about 58 years old.

8 It is further pertinent to note that the accused was taken into the custody in Crime No. 25 of 2017, registered at Kamothe police station, Navi Mumbai for the offences punishable under Sections 457, 380, 201 read with 34 of Indian Penal Code. However, after due investigation, a report under Section 169 of Cr.P.C. has been ordered by the learned Magistrate, Panvel on 24th July 2017.

9 It is in the aforesaid circumstances that this Court would not hesitate to record a satisfaction under Section 21, Sub-clause 9 of the MCOC Act that the accused may not indulge in similar offences if enlarged on bail. Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the applicant has made out a case for grant of bail.

10 The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of discharge application or at the time of trial. Hence, the order :

ORDER

- i) The application is allowed.
- ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.1,00,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall not leave Nashik till the conclusion of the trial without prior permission of the learned Magistrate.

iv) Within three weeks from the date of release, the applicant shall give an undertaking to the A.C.P., Crime Branch, Navi Mumbai that he would attend each and every scheduled date before the Special Court, Alibag.

v) In the eventuality that the applicant fails to give an undertaking or fails to attend any two consecutive dates, the prosecution would be at liberty to file an application under Section 439(2) of Cr.P.C.

(Smt. Sadhana S. Jadhav, J)