

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

BAIL APPLICATION NO. 792 OF 2019

Kimin @ Nana Liyakat Shinde

.... Applicant

Versus

The State of Maharashtra

.... Respondent

.....

Smt. Anita Agarwal i/b. Ashwini B. Jadhav, Advocate for
Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No. 532 of 2017 registered at Indapur Police Station, initially under section 394 of IPC. Subsequently, section 395 of IPC and section 3 (1) (ii), 3 (4) of the Maharashtra Control of Organized Crime Act (for short 'MCOCA Act') were added. MCOCA Act was applied on 7th October, 2017.

2. The FIR was lodged by one Hirabai Mahadev Dhole, on 15/08/2017. She has stated that in the night of 15th August 2017 the first informant was sleeping in her house with her married daughter, grand child and her husband. At around 2 a.m., the informant woke up and found that there were four persons standing nearby. They threatened the informant and her daughter. They removed cash, gold and silver ornaments from the locker and thereafter they went out. The informant's husband rushed out and sought help from others. It is the prosecution case that there were seven to eight other persons standing nearby and all of them have committed this offence. Therefore, section 395 of I.P.C. was subsequently added. The investigation was carried out. The statements of the witnesses including those of the informant, her daughter, her husband, her son and neighbors were recorded. The applicant was arrested on 14/09/2017, since then he is in custody.

Heard Smt. Anita Agarwal, learned counsel for the applicant and Shri Prashant Jadhav, learned APP for the

State/Respondent. Smt. Agarwal submitted that the applicant is a young boy of 20 years of age. He had not committed the offence. The identification is not proper. There is no recovery of ornaments or cash at his instance and that offence under MCOC Act is not made out as the offence was not part of continuing unlawful activity. She therefore submitted that the applicant be released on bail.

3. The Learned APP on the other hand submitted that there is recovery of axe at his instance. The applicant is identified in the identification parade by three witnesses i.e. informant, her son and neighbour Sunil Mahadik. He, therefore, opposed the grant of bail. He also pointed out there is confessional statement of the applicant recorded under section 18 of MCOC Act .

4. I have considered this submission. The main evidence against the present applicant is identification in the identification parade. The identification parade was held on 03/10/2017. At that time the present applicant and the co-accused were made to stand

in the parade. Three witnesses i.e. the informant, her son and neighbour Sunil Mahadik, all of them together were asked to identify the suspects. This procedure is contrary to the Criminal Manual. Though it is a matter of trial to establish whether all the proper requirements and precautions were taken before conducting the parade, on the face of it, the prosecution case shows that all the three witnesses went together to identify the suspects at the same time. Therefore, there is a strong possibility of discussion amongst the witnesses at the time of identification. This can hardly be called proper identification parade. This is also contrary to the procedure laid down in the Criminal Manual. Even on sound legal principles such identification parade can hardly be sustained. The other circumstance against the applicant is recovery of axe at his instance. Considering that he is an agriculturist; recovery of an axe at his instance is hardly incriminating.

4. As far as the confession under section 18 of MCOC Act is concerned, the entire tenor of the statement shows that it was exculpatory in nature. Only in last paragraph, in one line, he has

stated that he had committed this offence alongwith his associates. However, while describing the incident, he has stated that while he was sleeping in the house, they came and took him with them. They did not even tell him that they were going to commit dacoity. Thus, taking over all view of the matter, in the entire charge-sheet there is hardly any incriminating circumstance against the present applicant. Though, of course this evidence will have to be scrutinized properly and in detail during trial. In this view of the matter, since there is very weak evidence against the present applicant therefore there is no impediment under section 21 of MCOC Act to grant him bail. Though the affidavit filed by the State states that there is one C.R. No. 577 of 2017 at Indapur Police Station under section 395 of IPC which is pending, considering weak evidence in this case against him that will not come in his way. The applicant does not appear to have committed offence under MCOC Act and there is nothing to suggest that he will commit similar offence in future. Hence, the following order.

ORDER

- (i) In the event of his arrest in connection with C.R. No. 532 of 2017 registered with Indapur Police Station, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)