

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application No. 834 OF 2019

Girish Alam Kale

...Applicant

Versus

The State Of Maharashtra

...Respondent

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Mr. Prasad B. Kulkarni, Advocate for the Applicant.

Ms. A.A. Takalkar, APP, for the State.

Mr. R.D. Gaware, Police Constable, Shirur Police Station is present.

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CORAM : SARANG V. KOTWAL, J.

DATE : 15th OCTOBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R. No.656/2017 registered with Shirur Police Station, Pune for the offences punishable under Section 395 of I.P.C.. Subsequently, Sections 457 of I.P.C., and 3(1)(ii) & 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as 'MCOCA') were applied.

2. The applicant was arrested on 8.1.2018 and since then he is in custody. The investigation is over and the charge-sheet is filed. The FIR is lodged on 16.9.2017. The provisions of the MCOCA were applied on 13.10.2018.

3. The FIR was lodged by one Phulabai Waikar on

16.9.2017. She has stated that in the night between 15th & 16th September, 2017, at around 3:00 a.m., six unknown persons came to her house. She was sleeping outside on a cot. Out of those six persons, three were carrying wooden sticks, one was having an axe and one more accused was having a sword. They had covered their faces with handkerchieves. They forcibly removed the keys kept with her. They forcibly took her inside the house. They removed the ornaments and cash from her house including silver and gold ornaments. In all, the cash and ornaments worth Rs.1,23,700/- were removed. In the same night, they committed robbery in the houses of Ramdas Padwal and Dattatraya Kadam. The ornaments and cash were taken away from their houses also.

4. After registration of FIR, the investigation was carried out. As mentioned earlier, the provisions of the MCOCA were applied. During the investigation, statement of one of the accused Ramdas Kale was recorded under Section 18 of MCOCA. The charge-sheet contains statements of family members of the Dattatraya Kadam and Ramdas Padwal. The applicant was not put in test identification parade to enable any of these witnesses to identify him. The only circumstance against the applicant in this

entire charge-sheet is the alleged recovery of silver strips and two small toe rings effected on 7.2.2018.

5. Heard Mr. Prasad Kulkarni, learned Counsel for the applicant and Smt. A.A. Takalkar, learned A.P.P. for the respondent – State.

6. Learned Counsel for the applicant submitted that there is absolutely no material against the present applicant connecting him with the alleged crime. The articles which were taken away from the victims place were much more in number, however, only two strips and two toe rings were found at the instance of the applicant. Those articles were not identified by the complainant and other victims. Therefore, there is no connection of this recovery with the alleged crime. He submitted that the confession of the co-accused involving the applicant by itself is not sufficient to prove the guilt of the applicant. He further submitted that the approval under Section 23 of MCOCA itself shows that in the past there were two cases against him in which he was acquitted. He submitted that neither the offence under MCOCA nor under I.P.C. is established against the applicant at this stage.

7. Learned A.P.P. opposed this application. She relied on

the recovery of ornaments at the instance of the applicant. She submitted that the FIR shows that the silver strips and two toe rings were taken away forcefully. She submitted that this connection sufficiently shows the guilt of the applicant.

8. I have considered all these submissions. As rightly pointed out by learned Counsel for the applicant, the prosecuting agency does not have evidence to show that the applicant was even a member or was part of the gang of dacoits because he was not even put for test identification parade. Therefore, the important circumstance of possible identification is missing in this case. The only circumstance against him is recovery of these two articles as mentioned earlier. However, significantly these two articles were not shown to any of the victims and none of them have identified these articles. The recovery of these articles was effected on 7.2.2018 i.e. after more than 4 to 5 months from the date of the incident. The articles were kept near river bed under a stone. This place obviously was open and the articles were just kept below a stone. In any case these articles are not identified by any of the victims. Therefore, there is no connection of recovery of articles with the alleged crime. The only circumstance worth

mentioning against the applicant is the alleged confession given by the co-accused. That by itself may not be sufficient to prove the guilt of the applicant. This being a solitary piece of evidence, the case against the applicant appears to be weak. Therefore, at this stage, there is scope to believe that the applicant has not committed any offence under the MCOCA. Considering the fact that he is acquitted of past offences, there is reason to believe that he is not likely to commit similar offence under MCOCA. In this view of the matter, the applicant deserves to be released on bail. Hence, the following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No.656/2017 registered with Shirur Police Station, Pune on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned police station once in two months till conclusion of the trial.
- (iii) Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)