

Anand

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

BAIL APPLICATION NO. 1733 OF 2019

Rakesh Sohanlal Lohar .Applicant

Vs.

The State of Maharashtra .Respondent

**WITH
CRIMINAL APPLICATION NO. 1072 OF 2019
IN
BAIL APPLICATION NO. 1733 OF 2019**

Devilal Ratanlal Lohar .Intervenor

IN THE MATTER OF

Rakesh Sohanlal Lohar .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. S. Bhole a/w Mr. N. Ghate, Mr. A. Cutlariwala i/b. Mr. H. Jagtiani,
Advocate, for the Applicant

Mrs. P. P. Shinde, APP, for the Respondent – State

Mr. Vinod Kashid, Advocate, for the Intervenor

CORAM : REVATI MOHITE DERE, J.

DATE : 26.07.2019

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 210 of 2018 registered with the MIDC Police Station, Mumbai, for the alleged offences punishable under Sections 394, 395, 328, 201, 120B r/w 34 of the Indian Penal Code.

3. Perused the papers. Admittedly, the Complainant – Devilal Lohar and all the accused including the Applicant are relatives. It is the prosecution case, that the incident took place on 04.05.2018 at 9.30 a. m., when Devilal Lohar (owner of the jewellery shop) had gone to Rajasthan. Admittedly, co-accused – Kamlesh was working in Devilal's jewellery shop since January, 2018. Initially, the complaint was lodged by co-accused – Kamlesh alleging that when he was alone in the shop on 04.05.2018 at 9.30 p. m., some unknown persons came to purchase jewellery and sprayed something on his face and assaulted him, pursuant to which he became unconscious and thereafter, the said persons committed robbery from the shop i. e. gold jewellery weighing 9 kgs. During investigation, it was revealed that co-accused – Kamlesh had staged the robbery and that he himself was involved in the offence. During the course of investigation, the Applicant and his father also

came to be arrested. Admittedly, the Applicant was in Rajasthan from 29.04.2018 alongwith his family and returned back to Mumbai on 5.05.2018, alongwith the Complainant – Devilal. As far as conspiracy between the Applicant and Kamlesh is concerned, prima facie, there is no material to show the same. It appears from the statement of one Krishna Pab that some time in October, 2018, the Applicant and his father gave two gold biscuits (allegedly after melting the gold jewellery which was stolen) weighing 80 & 70 grams for preparing ornaments. There is another witness who has stated that the Applicant had kept certain jewellery with him in 2014 and that he took the same back, after paying cash in October, 2018. Learned counsel for the Applicant submits that there is no recovery of the actual gold ornaments, which were stolen. What is recovered are gold bars alleged to have been converted after melting the jewellery. Whether or not the Applicant was part of the conspiracy to commit the alleged offence with Kamlesh and other accused, is a matter which will be decided by the trial Court. The Applicant is in custody since 19.09.2018. Although, charge-sheet is filed, investigation is still going on under Section 173(8) of the Cr.P.C.

4. Considering the role of the Applicant, the Application is allowed and the Applicant is enlarged on bail on the following terms &

conditions :-

ORDER

- (i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 50,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iii) The Applicant shall report to the investigating officer of the concerned police station on the **first Saturday of every month** between **10.00 a. m. and 1.00 p. m.** till the conclusion of the trial;
- (iv) The Applicant to co-operate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
- (v) The Applicant shall file an undertaking with regard to clauses (ii) to (iv) in the trial Court, within two weeks of his release;
- (vi) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

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

6. In view of disposal of the Bail Application, the Intervention Application does not survive and the same stands disposed of accordingly.

7. 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.

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

(REVATI MOHITE DERE, J.)