

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2415 OF 2019**

Sohanlal Lohar	...Applicant
Versus	
State of Maharashtra	...Respondent

**WITH
CRIMINAL INTERVENTION APPLICATION NO. 1 OF 2019
IN
CRIMINAL BAIL APPLICATION NO. 2415 OF 2019**

Devilal Ratanlal Lohar	...Intervener
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IN THE MATTER OF

Sohanlal Lohar	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Siddhesh Bhole a/w Mr. Abdulla Cutlariwala, Mr. Nikhil Ghate i/b
Haresh Jagtiani & Associates for the Applicant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent-State

Mr. Vinod V. Kashid for the Intervener/Complainant in IA/1/2019

PI Mr. Santosh Jadhav from MIDC Police Station, is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 4th OCTOBER 2019

P.C. :

1 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, 120B r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused-Rakesh Lohar (son of the applicant) has been released on bail by this Court (Coram : Revati Mohite Dere, J.) vide order dated 26th July 2019 passed in Bail Application No. 1733 of 2019. He submits that admittedly, the applicant was not present in Mumbai at the time of the alleged incident and was in Rajasthan along with co-accused-Rakesh Lohar. He submits that the complainant was also in Rajasthan at the time of the incident and that both i.e. the applicant and the complainant returned on the same flight from Rajasthan to Mumbai.

4 Learned A.P.P opposed the application. He submits that there is recovery of 2100 grams of gold at the instance of the applicant. He further submits that gold was recovered at the behest of the co-accused-Kamlesh from the applicant's field/land in Rajasthan. He further submits that the applicant has disposed of the gold which was handed over to him by co-accused-Kamlesh. According to the learned A.P.P, there are CDRs to show that the applicant was in touch with his son-Kamlesh in Mumbai.

5 Learned counsel for the complainant reiterated the submissions advanced by the learned A.P.P.

6 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 4th May 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 4th May 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, Kamlesh, Rakesh and the applicant came to be arrested. Kamlesh and Rakesh are the applicant's sons. Admittedly, the applicant was in Rajasthan from 29th April 2018 alongwith his family and returned to Mumbai on 5th May 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. Similarly placed co-accused-Rakesh Lohar has been granted bail vide order dated 26th July 2019. Rakesh Lohar was also not present in Mumbai at the time of the incident and was in Rajasthan along with the applicant. It appears that what was seized were gold biscuits and not ornaments from the applicant. The applicant was also in the business of jewellery. As far as CDRs exchanged between the applicant and co-accused-Kamlesh (applicant's son), the same cannot be said to be *prima facie* incriminating, considering the relationship between the parties. There is no recovery of any gold ornaments at the instance of the applicant. The applicant is in custody since 19th November 2018.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 1:00 p.m, till the conclusion of the trial;

- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;
- (vii) 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.

8 The application is accordingly disposed of.

9 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.

10 In view of the above order, the intervention application No. 1 of 2019 does not survive. The same is also disposed of.

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

REVATI MOHITE DERE, J.