

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2947 OF 2017

James Almeida @ Sam, Age 29 years, R/o.Room No.402, Vikramgad Building, Ashtainayak Sankul, Phase-1, Adaigaon, New Panvel, District Raigad.	Applicant
versus	
The State of Maharashtra	Respondent

Ms.Rohini Salian I/by S.B.Bhatagunaki for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th February 2019

PC :

1. The applicant is seeking bail in connection with CR No.55 of 2015 registered with Panvel Railway Police Station for offences under Sections 395, 397, 120B r/ w Section 34 of Indian Penal Code r/w Sections 3 and 25 of Arms Act. The first information report was registered on 4th August 2015. Subsequently the provisions of Maharashtra Control of Organized Crimes Act ('MCOC Act') were applied.

2. According to the prosecution the applicant is the master mind in the present offence, who had chalked out the plan and pursuant to that the offence was committed. The prosecution case is that on 3rd August 2015 the complainant was travelling by Konkan-Kanya Express from Mumbai to Goa. He was accompanied by another

person. The complainant is the goldsmith. He was carrying gold worth Rs.71.56 lakhs. While they were travelling, at about 4.20 am of 4th August 2015, the accused entered into the compartment of train. They snatched the bag and started breaking chain of bags. The complainant started shouting. One of them showed pistol. The other person was carrying knife. The complainant was threatened to assault and robbed of gold ornaments. Hence, the FIR was registered. The applicant was arrested. On completing investigation charge sheet was filed.

3. Learned counsel for applicant submits that there is no evidence against applicant to establish his link with the crime. He was not present at the scene of offence. The provisions of MCOC Act are not applicable to him. The applicant is in custody since last three years. The only allegation against the applicant is that he is a conspirator which is not substantiated by any evidence. The co-accused has been granted bail by this Court.

4. Learned APP submitted that there is substantial evidence against applicant. The prosecution has filed affidavit opposing the application for bail. The affidavit indicate the nature of evidence against applicant. It is submitted that the applicant is the master mind in the crime. He is the gang leader. There is recovery from him. The pistol was recovered at the instance of applicant. The gold weighing about 38 grams was also recovered during the search of his house. The CDR record shows involvement of applicant in crime. There are about 15 cases registered against applicant. It is also submitted that the car used in commission of crime is also recovered at the instance of applicant.

5. I have perused the charge sheet. The case of co-accused who has been granted bail, is different and the parity is not applicable to the applicant. There is evidence against the applicant showing his involvement in the crime. The submissions advanced by learned APP are supported by material on record. There is recovery of car, pistol and gold at the instance of applicant. The involvement is corroborated by CDR record and other evidence. The confessional statement of the co-accused indicates that the applicant is the master mind in commission of crime and he was instrumental in hatching conspiracy to commit the crime. The call record also indicates his association with other accused. As stated above, there are several cases registered against the applicant.

6. Considering the nature of evidence and in the light of rigors u/s 21(4) of MCOC Act, no case for grant of bail is made out. Accordingly, Criminal Bail Application No.2947 of 2017 is rejected.

(PRAKASH D. NAIK, J.)

MST