

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

CRIMINAL BAIL APPLICATION NO.3117 OF 2018

Bholasing Mohsing

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Niranjan Mundargi i/b. Vikram R. Sutaria, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.
- PSI Mr.S.V. Kadam, Rajgad Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 09th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.25/17 registered with Rajgad Police Station, Pune, under sections 395, 397, 342, 412 and 201 of the Indian Penal Code, under sections 4 and 25 of the Arms Act and under sections 3(1)(ii) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (**MCOCA**).

2. The Applicant was arrested on 13/03/2017 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

3. The FIR is lodged on 03/03/2017 by one Raghunath Gopal Mali, who was working as a watchman with M/s Yasho Electric Pvt. Ltd. at village Ranje, District Pune. On 03/03/2017 at about 03.30 a.m. in the night when he was on duty in his company, about 10 to 12 persons came to his company. They were carrying wooden sticks and swords. The informant was asked to wake up the workers. There were four workers. All of them were assaulted by those unknown persons. The informant and those workers' hands and legs were tied. Three of them waited near the informant and those workers. The others went out. The informant heard sound of one vehicle being brought inside the gate. After some time, three unknown persons who were keeping watch left from there and all of them left in that vehicle. The informant heard the sound of the vehicle going out of the company. After the workers and the informant made sure

that the dacoits had left the place, they somehow freed themselves. They found that the dacoits had taken away money and mobile phones etc.

4. The FIR was lodged. The watchman had informed the others from the company. They inspected the goods of the company and found that various goods were taken away by those dacoits. Goods consisted of enamel copper strip weighing 2690 kg., enamel copper wire weighing 1394 kg, aluminum strip weighing 104 kg etc. Total value of the stolen goods was more than 23 lakhs.
5. Investigation was carried out. The Applicant was arrested as mentioned earlier. The charge-sheet mentions that nine accused namely Kapildev Dube, Vajir Savant, Imran Savant, Ahmed Husen Savant, Raysab Yadav, Pramodkumar Bansbahadur Singh, Ramakant Thakur, Amit Saha and Sagar Das actually took part in the dacoity. They removed the goods in a tempo bearing No.MH-48-J-0869. The stolen goods were

unloaded in an agricultural field belonging to one Sanjay Bhanushali. Some of the goods were sold by accused Gopal Rajput to the present Applicant. The Applicant was working as a Manager in one Sam Auto Company. The Applicant purchased that property with consent of his employer Manish Arora.

6. During investigation the provisions of MCOCA were applied by obtaining approval u/s 23(1) of the said act. After completion of the investigation sanction u/s 23(2) was also accorded. The sections 3(1)(ii) and 3(4) of MCOCA were applied.
7. Heard learned Counsel Mr.Niranjan Mundargi for the Applicant and learned APP Mr.Prashant Jadhav for the State.
8. Learned Counsel Mr.Mundargi for the Applicant submitted that the Applicant was merely an employee. He had purchased the goods after informing his employer Manish Arora. He was merely acting on his instructions. He was not knowing

Gopal Rajput who had actually brought those goods to his company. He was not knowing that the property was acquired by committing dacoity or that it was an act of an organized crime syndicate. He invited my attention to the statements of two witnesses. Those witnesses make reference to the Applicant's name. He submitted that no offence is made out against the Applicant and he deserves to be released on bail. In any case, he is in custody since 13/03/2017 and therefore this is one more ground on which the Applicant's prayer for bail should be considered.

9. Learned APP Mr.Jadhav opposed this application and relied on the charge-sheet as well as section 21(4) of MCOCA. He submitted that the offence of MCOCA is clearly established against the Applicant. Therefore, at this stage, he cannot be granted bail.

10. I have considered these submissions. Mr.Mundargi invited my attention to the statement of one Sanjay Bhanushali,

in whose field the goods were unloaded. This witness has stated that he was knowing accused Gopal Rajput. Gopal was dealing in the business of scrap material and real estate. About 15-20 days prior to recording of his statement on 16/03/2017 the said Gopal Rajput met him and told this witness that he was expecting his scrap material shortly and he wanted a place to unload that material. This witness gave permission to use his field. On 03/03/2017 at about 01.30 p.m. Gopal Rajput came to his field followed by a tempo. The tempo was unloaded. Gopal separated the goods which were kept in the field. He burnt the containers in which the property was brought.

11. Mr.Mundargi thereafter referred to the statement of one Vijay Shridhar. This witness has stated that he was knowing Gopal Rajput. He has further stated that Gopal approached him and told him that he had copper goods weighing about one ton and he wanted to sell them. This witness was knowing the Applicant and his employer Manish Arora. At the instance of this witness, Gopal met the present Applicant and offered to sell his

goods. The Applicant in turn sought permission of his employer Manish Arora and on his instructions he purchased some of the goods weighing 2653 kg.

12. Mr.Mundargi submitted that the state's affidavit refers to the statement of one S.I. Shaikh. It is alleged in the affidavit that this witness has stated that the Applicant had purchased the stolen property below market price without verifying bills from Gopal. Mr.Mundargi submitted that the said witness S.I. Shaikh has not stated anything as mentioned in the affidavit.

13. I have perused the statement of S.I. Shaikh. He has mentioned that on 10/03/2017 the goods were unloaded in the store room and when this witness had asked the Applicant about the bills the Applicant had stated that the bills would be forwarded after two days. This witness has not stated anything further.

14. I have considered all these submissions and

statements. The statements of the witnesses show that the Applicant was not even knowing the accused Gopal or any other accused involved in this offence. The Applicant was not directly or indirectly involved in committing dacoity. This Applicant came in contact with accused Gopal only through the witness Vijay Shridhar and thereafter on the instructions of his employer he had purchased those stolen goods. Purchasing of such goods was also not unusual because the business of their company was of melting scrap material for recycling. Therefore, at this stage, there is nothing to show that the Applicant was knowing anything about the unlawful activity of the organized crime syndicate. He was not knowing any of the members of the syndicate even as per the statement recorded in the charge-sheet. The Applicant has acted on the instructions of his employer. Therefore, even on that count no fault can be found with him for purchasing of those goods. The Applicant is already in custody since 13/03/2017. Considering the over all circumstances referred to hereinabove, it does not appear that the Applicant has committed any offence under the MCOCA. The

Applicant does not have criminal antecedents. Therefore there is no reason to believe that he would commit similar offence in future again. Therefore bar under section 21(4) will not operate against him. In these circumstances, 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.25/17 registered with Rajgad Police Station, Pune, 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.)