

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

CRIMINAL BAIL APPLICATION NO.525 OF 2021

Gulabsahab Appasahab Multani ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Vipin Bidkar, for the Applicant.

Ms. Anamika Malhotra, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th SEPTEMBER 2021

(THROUGH VIDEO CONFERENCING)

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.32 of 2017 registered with the Nesari Police Station, Kolhapur, for the alleged offence punishable under Sections 397, 120B of the Indian Penal Code (I.P.C.) and under Sections 3 (1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act (MCOC Act).
3. Perused the papers. The complainant – Chaku Rajgole was working as a Secretary in Mahalaxmi Mahila Sahakari Doodh Sanstha,

Bugadikatti and his friend Dattu Patil was also working as a Secretary in Hanuman Doodh Sanstha Limited, which was situated at Gudalkop-Bugadikatti. The complainant has stated that the accounts of both the Doodh Sanstha's, was with the Bank of India, Hebbal Branch and as such they both would go on one motorcycle. He has alleged that the incident took place on 22nd December 2017. He has stated that at about 1:00 p.m., he withdrew an amount of Rs.70,000/- from the account of the Doodh Sanstha and his friend, Dattu Patil withdrew an amount of Rs.3,00,000/- from the account of Hanuman Doodh Sanstha Limited. He has stated that after withdrawing the said amounts they were proceeding on the complainant's motorcycle, when the incident took place. The complainant has alleged that when they came near Ghungurwadi, four persons came with their faces covered with handkerchief and threw chilli powder in their eyes. The said persons are stated to have assaulted and robbed them and forcibly taken cash of Rs.3,70,000/- from the complainant and his friend – Dattu Patil, and thereafter, are stated to have fled from the spot. Pursuant thereto, an FIR was lodged as against unknown persons. During the course of investigation, the applicant was arrested on 5th March 2018 i.e. after about 3 months. According to the prosecution, there is recovery of Rs.5,000/- at the instance of the applicant.

4. Learned Counsel for the applicant submits that the Test Identification Parade was held after more than six months of the incident i.e. on 11th June 2018 and as such the possibility of the complainant and his friend – Dattu Patil identifying the applicant appears to be doubtful, more particularly, when the applicant's face was allegedly covered with a handkerchief and when chilli powder was allegedly thrown in their eyes. He submits that the injuries sustained by the complainant and his friend – Dattu Patil are simple in nature and are possible by fall from the motorcycle. He submits that the applicant is in custody since 5th March 2018 with no prospect of the trial commencing in the immediate near future. He submits that till date charge has also not been framed in the said case. He submits that there is an offence as against the applicant under Section 379 of the I.P.C, which was registered in the year 2016.

5. Learned APP has filed an affidavit of Ganesh P. Ingale, Sub-Division Police Officer, Gadhinglaj Division, District – Kolhapur, to oppose the the application. Learned APP states that apart from the Test Identification Parade and recovery of money, there is no other materia *qua* the applicant.

6. As far as recovery of money is concerned, the said amount recovered cannot be said to be incriminating, as there is nothing to show that it was the same money which was withdrawn by the complainant and his friend – Dattu Patil. The Test Identification Parade was conducted after more than six months of the incident. It is the prosecution case that the faces of the accused were covered with handkerchiefs and that chilli powder was thrown in the complainant's and his friend – Dattu Patil's eyes, and as such, whether they could have observed the accused is *prima facie* doubtful. Whether or not the applicant has been correctly identified or not, in these circumstances, is a matter which will be decided by the trial Court. *Prima facie*, the applicant has made out a case for grant of bail and therefore the embargo of Section 21 (4) of the M.C.O.C. Act, will not apply.

7. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local 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 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall not leave the Kolhapur district, without the permission of the trial Court;
- (iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant shall inform his latest place of residence and mobile contact number immediately after being released 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;
- (vi) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The aforesaid conditions are imposed since the applicant is a resident of Belgaum.

9. The application is allowed in the aforesaid terms and is accordingly disposed of.

10. 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.

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

REVATI MOHITE DERE, J.