

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

BAIL APPLICATION NO. 201 OF 2020

Murgandi @ Kumar Samungsundarum Tevar ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Santosh M. Deshpande, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Dnyaneshwar Bhedodkar, (A.P.I.), Central Unit Crime Branch,
Navi Mumbai, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd SEPTEMBER, 2021.

PER COURT:

1. The applicant is seeking bail in C.R. No. 169 of 2016 registered with NRI Sagari Police Station, Navi Mumbai for offences under Sections 395 & 397 of Indian Penal Code (for short “IPC”), Sections 3 & 25 of Arms Act and Sections 37(1) & 135 of Mumbai Police Act. Subsequently, Sections 120(B), 411 r/w 34 of IPC and Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") were invoked. The First Information Report (for short ‘FIR’) was registered on 6th August, 2016. The applicant was arrested on 27th February, 2018.

2. The case of the prosecution is that, on 6th August, 2016, five persons armed with deadly weapons and fire arms entered into the office of Popular Finance Company, where the complainant was working and committed dacoity of gold weighing 20 Kgs valued Rs.6,00,00,000/- as well as cash of Rs.9,50,000/-. They sat in swift car and fled from the place of incident. During the course of investigation, the accused were arrested. According to prosecution, Arputraj @ Appu Palraj Nadar is the gang leader of the organized crime syndicate. He was engaged in several unlawful activities. Prior approval was granted for applying the provisions of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act"). Investigation was completed. Sanction was granted to prosecute the accused under Sections 3(1)(ii), 3(2), 3(4) of MCOC Act.

3. Learned Advocate for the applicant submitted that the provisions of MCOC Act are not applicable against the applicant. He was not the person, who had entered into the office premises and committed dacoity. According to prosecution, the applicant is person, who was driving the vehicle in which the co-accused Iqbal Kasam Pathan @ Pappu, and Arputraj @ Appu Palraj Nadar were travelling with him. The parade was conducted. Allegedly there

was discrepancy in the parade. The applicant has not been clearly identified. During investigation, no role has been attributed to him. Although, it is alleged that there is recovery of gold from the applicant, it has not been identified to be the property involved in the crime. The place where the witness had seen the applicant with co-accused is situated at Kalamboli which is far away from the place of incident. The co-accused Iqbal Kasam Pathan @ Pappu, who was similarly placed has been granted bail by this Court. The accused Subramaniam Balkrishnan Thevar was granted bail by this Court vide order dated 28th August, 2019. The third accused Ponnuswamy Tangaswamy Nadar was also granted bail by this Court vide order dated 15th October, 2018. There are no criminal antecedents against the applicant. He was allegedly shown involved in one case which has resulted in acquittal.

4. The prosecution has filed affidavit-in-reply opposing the application for bail. Learned APP submitted that the applicant is member of crime syndicate. He has been identified. There is recovery of gold weighing 180 grams from the applicant. The applicant was driver of vehicle used in commission of crime. The offence is of serious nature. There was robbery of huge property. The applicant left the vehicle at Kalamboli, Navi Mumbai. The gold

ornaments were taken away. This incident was witnessed by one person, who has identified the applicant in test identification parade. The parade was conducted on 5th April, 2018. Gold chain weighing 40 grams was seized from residence of applicant. C.C.T.V. footage shows that applicant was driving vehicle.

5. Undisputedly, the applicant is not the person, who had entered into the office of the complainant and involved in threatening and committed dacoity of gold. The inmates of the office has referred to five unknown persons having entered into the office. Supplementary statement of complainant was recorded on same day in which he gave description of accused, who had entered the office and committed dacoity. His further statement was recorded on 15th December, 2016, wherein it is stated that he had visited Taloja jail for identification parade. While parade was conducted he was scared and although he identified three accused, he had stated that he could not identify them. Three accused who were put up in the parade were Arputraj @ Appu Palraj Nadar, Iqbal Kasam Pathan @ Pappu and Sudishtraj @ Sudeshraja @ Lamburaja @ Jada Raja. The parade memo indicate that they were not identified by complainant. The second witness did not identify them. The third witness identified them. The fourth witness did not

identify Arputraj and Sudishtraj. Accused Iqbal Pathan was identified. The last witness in that parade did not identify any of them. On 15th December, 2016, statement of one of the witness, who had participated in parade was recorded and he stated that, since he was scared, he stated during parade that he cannot identify three accused, although he had identified them. Statement of another witness was recorded. He stated that on 6th August, 2016, one swift car was driven in speed and halted near him. Five persons got down. They threatened him and the car was driven towards Panvel - Mumbra. Statement of this witness was recorded on 15th December, 2016. He stated that identification parade was conducted on 14th December, 2016. Although he identified first suspect, due to fear he stated that he has not identified him. He identified second accused. Although he identified third accused, due to fear he did not state that he has identified him. The name of accused identified by him is Iqbal Kasam Pathan. Another identification parade was conducted on 5th April, 2018. The witness has allegedly identified applicant. This parade was held two years after the incident of dacoity. It is not stated what role was played by applicant. Statement of witness was not recorded after parade. The co-accused Iqbal Kasam Pathan @ Pappu, who was identified by witness and two other accused were granted bail by this Court.

Accused Subramaniam Balkrishnan Thevar was released on bail by this Court by order dated 28th August, 2019. While allowing the said application, it was observed that the said applicant was not one of the persons amongst the five unknown persons, who had entered into the office of Popular Finance Company. He was allegedly involved in handing over gold ornaments given by co-accused Arput Raj @ Appu Nadar to his mother. Ponnuswamy Tangaswamy Nadar was also granted bail by this Court vide order dated 15th October, 2018. The case of the prosecution against him is that the gold weighing about 100 grams were handed over to him. While granting bail to him it was observed by this Court that he is not the person, who has been identified has involved in the crime. Iqbal Pathan @ Pappu was granted bail by this Court vide order dated 28th June, 2021. The case against him was that he was associated with gang leader and there are cases registered against him. He was identified by the eye witnesses and there was recovery. This Court noted that there were discrepancies in the material connected by the investigating agency. The test identification parade was dubious. It is pertinent to note that, the said accused was allegedly in the vehicle with the applicant. There is no evidence that applicant is involved in crime syndicate and committed offences. In the light of the aforesaid facts and

circumstances, the embargo under Section 21(4) of MCOC Act would not be an impediment to grant bail to the applicant.

6. Hence, I pass the following order:-

ORDER

- (i) Criminal Bail Application No. 201 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 169 of 2016 registered with NRI Sagari Police Station, Navi Mumbai on executing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in a month on first Monday of the month between 10:00 a.m. to 12:00 noon till further order;
- (iv) The applicant shall not tamper with the evidence or attempt to influence the witnesses;
- (v) The applicant shall furnish his latest place of residence and mobile contact number to the investigating officer;
- (vi) The applicant shall not leave Mumbai City/Thane City without prior permission of the trial Court;
- (vii) Application is disposed of accordingly.

(PRAKASH D. NAIK, J.)

SAJAKALI
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JAMADAR

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by SAJAKALI
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