

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

CRIMINAL BAIL APPLICATION NO. 306 OF 2021

Deepak Madhukar Bhalerao	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms. Leela Malu i/b Leela D. Malu & Associates for the Applicant

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

API Mr. Nilesh Kanade from Kalwa Police Station, Thane, is present

CORAM : REVATI MOHITE DERE, J.

THURSDAY, 1st APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

2 This is the second bail application preferred by the applicant seeking his enlargement on bail in connection with C.R. No. I-236 of 2016 registered with the Kalwa Police Station, Thane, for the alleged offences punishable under Sections 395, 398, 120B of the Indian Penal Code; under Sections 4 and 25 of the Arms Act; under Sections 37(1), 135 of the

Maharashtra Police Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act.

3 Learned counsel for the applicant submits that the applicant was about 18 years of age at the time of the alleged incident and is languishing in jail since 19th July 2016 i.e. for about 5 years. She submits that earlier due to the lock-down, the case could not be taken up and that the trial is getting delayed on some pretext or the other. She submits that witness–Asgar Ali Shaikh, who had disclosed the complicity of the applicant, has already been examined. She submits that the allegation is that the applicant had pulled out Rs. 610/- from the shirt pocket of this witness. She submits that the prosecution intends to examine about 29 witnesses. Learned counsel has tendered an affidavit-cum-undertaking of the applicant stating therein that he will not enter the jurisdiction of Thane, except for attending the trial on the dates given by the trial Court; that he will not indulge in any criminal activity and that he will not tamper with the witnesses. The said affidavit-cum-undertaking is taken on record.

4 Learned A.P.P opposes the bail application. He submits that the trial has commenced and that 6 witnesses have been examined till date.

5 Perused the papers. The first bail application of the applicant was rejected on merits vide order dated 5th April 2018. The said order is on page 12 of the application. The present application is filed on the premise that the applicant is languishing in jail since 19th July 2016 and that the applicant has undergone about 5 years in jail, whereas, the sentence that can be awarded if convicted, would be 10 years under the MCOC Act. She submits that the applicant was only 18 years at the relevant time and that the only allegation as against him is that he pulled out a sum of Rs. 610/- from Asgar Ali Shaikh's shirt pocket.

6 No doubt, the first bail application of the applicant was rejected on merits, after considering the material on record as against the applicant, however, having regard to the fact that the applicant is in custody for about 5 years, which is the minimum sentence that can be imposed, if convicted under the MCOC Act, and considering the fact that the trial is not likely to conclude in the immediate near future, 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. 20,000/- 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 between 5:00 p.m. to 6:00 p.m, till the conclusion of the trial;
- (iii) The applicant shall not enter Kalwa and Thane City, till the conclusion of the trial, except for the purpose of attending the trial Court and the Police Station;
- (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 breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7 The application is accordingly disposed of.

8 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.

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

REVATI MOHITE DERE, J.