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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 688 / 2020

Maruti Navnath Sonawane
Age : 46 years,
R/o at : Sencies 32/6, Opp. Mahindra
Building, Sanjay Gandhi Nagar,
Mumbai - 400 002. **.. Applicant**

Versus.

The State of Maharashtra
At the instance of
Kalachowki Police Station. **.. Respondent**

Mr. Prashant Pandey a/w Mr. Darshit Jain, Mr. Irfan
Unwala, Mr. Aman Dhruva, Advocates for Applicant.
Ms. Anamika Malhotra, APP for State.
Mr. Sachin S. Hire, P.I., Protection and Security
Branch Mumbai, Kalachowki Police Station.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 13th AUGUST, 2021.
PRONOUNCED ON : 24th AUGUST, 2021.

O R D E R : -

Heard.

1. Applicant is Accused No.3 in MCOCA Special Case No. 14/2019. He seeks bail.

2. Prosecution case in brief is that the Complainant is a Jeweller, who on 6th April, 2019, left his house on 10:15 am. alongwith black colour leather bag, containing 1800 gms gold jewellery for marketing at Panvel. He boarded the train at Chinchpokli Station. He alighted at Kurla and boarded another Panvel bound train. After reaching Panvel, he visited to one Surya Jewellers to show them designs of the gold jewellery. At around 20 hrs., he took back the same route and reached Chinchpokli Railway Station at around 20.40 hrs. He took foot over bridge and came out of the Station and reached near the Ganesh Utsav Mandal at around 20.50 hrs. All of a sudden two unknown persons confronted him and tried to snatch the bag, containing gold jewellery. In the scuffle, a

unknown person wearing a red cap attacked Complainant with sharp chopper on his right hand. Whereupon another person snatched the bag full of ornaments and fled the spot. The assailants allegedly threatened and scared the mob of dire consequences had any one dare to interfere. The incident was reported by the Complainant. Whereafter the Crime No. 70/2019 dated 7th April, 2019 was registered against the unknown persons under offences punishable under Sections 395, 397, 412, 341, 201, 120-B of the Indian Penal Code, 1860.

3. Investigation revealed that the attack was held by three persons. They were identified in the test identification parade. Investigation divulged that one Ayyub Chikna (co-accused) was the Master-mind behind the subject dacoity. Investigation further divulged that Ayyub Chikna hatched the conspiracy with the co-accused to commit the dacoity and in execution thereof, Applicant was asked to monitor movements of the Complainant. Essentially,

investigation shows the Applicant was provided with a SIM-card, procured by the Ayyub Chikna bearing card no. 7715974304370. This SIM-card was used by the Applicant to apprise Ayyub Chikna, movements and location of the Complainant, while he was returning from Panvel to Chinchpokli alongwith a bag containing jewellery. Investigation further revealed that Applicant was paid Rs. 1 Lac to watch the movements of the Complainant. Investigation revealed that four SIM-cards were activated on 20th March, 2019 and deactivated on 6th April, 2019. The Call Details Record (CDR) and tower locations of the SIM-cards provided by Ayyub Chikna to the Applicant and the co-accused show that users were present at the spot of the incident of attack. After completing the investigation report was submitted to Commissioner of Police for according the sanction to prosecute the accused under Section 3(1) (ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (M.C.O.C. Act for short).

Commissioner of police, after perusing the proposal first granted approval and thereafter sanction under Section 23(2) of the M.C.O.C. Act on 6th April, 2019.

5. Learned Counsel would contend that the Applicant has been implicated in the false case and there is no iota of evidence against him. Thus, contended that no case of offence punishable under M.C.O.C. Act has been made out. It is argued that affidavit filed by the Investigating Officer does not show which of the two charge-sheets were considered while granting sanction to prosecute for committing offence of organised crime. It is contended that the offences registered against the Applicant in past being Crime No. 135/2016 under Section 394 of IPC and Crime No. 229/2018 under Section 324; were characterised by the individuality and there is no commonality between the previous offences registered against the gang-leader and the applicant. It is submitted that the Applicant was arrested on 12th April, 2019. Investigation is over and charge-sheet

has been filed. On these grounds, the Applicant is seeking his enlargement on bail.

6. Ms. Malhotra, learned APP vehemently opposed the bail plea of the Applicant and would rely on the charge-sheet and the affidavit in reply filed by the Assistant Commissioner of Police.

7. Although it is prosecution case that the gang-leader Ayyub Chikna had procured four SIM-cards from Rakesh Jaiswal (co-accused), except the statement of co-accused, there is no evidence to indicate that particular SIM was used by the Applicant to keep vigil on the movements of Complainant, while he was travelling from Panvel to the spot of the incident. In so far as Applicants' complicity in the 'organised crime' is concerned; it may be stated that the affidavit of the Assistant Commissioner of Police is silent, on 'commonality' between the previously registered offences and the present crime. Besides it can be seen from the affidavit-

in-reply, that offences registered against the gang-leader do not show involvement of Applicant therein. Neither particulars of nature of offences committed by the gang-leader has been stated, nor the nexus between the previous and present offences has been shown or pointed out.

. In the case of **State of Maharashtra Vs. Bharat Shantilal Shah and Others** (2008) 13 SCC 5; the Hon'ble Apex Court has held that offences, which do not look to be common to those under the MCOC Act, would not be relevant for the purpose of denying the relief of bail. Consequently, reply filed by the Prosecution does not show that previously registered offences against the Applicant and gang-leader have anything in common with the offences registered in the present crime. Therefore, crimes registered against the Applicant and gang-leader were characterized by individuality.

8. Thus, in consideration of the facts of the case, I am satisfied there are reasonable grounds for believing that the Applicant is not guilty of an offence of organised crime and further the circumstances do not suggest that Applicant is likely to commit offence for releasing him on bail. Even otherwise, the Applicant is in custody since April, 2019. The trial is not likely to commence and conclude in the near future. Yet Applicants' presence for the trial can be secured by imposing conditions.

9. For the reasons stated above, the Application is granted. Thus, the following order.

O R D E R

(i) The applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand) with one or

more sureties in the like amount;

(ii) The applicant shall furnish his residential address as well as permanent address and contact details to the Investigating Officer within seven days from his release from jail;

(iii) The applicant shall report to the Investigating Officer, twice a month i.e. 1st and 4th Monday of each month between 11:00 am. to 01:00 pm., commencing from September, 2021, till the charge is framed;

(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;

10. Application is allowed and disposed of.

11. It is made clear that observations made

hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

Najeeb/..