

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1528 OF 2021

Sameer @ Sonya Jalinder Bodke ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Kuldeep S. Patil i/b Saili N. Dhuru, for the Applicant.

Smt. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 30th November, 2021.

PRONOUNCED ON : 14th December, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 560 of 2018 registered with Dehuroad Police Station, District- Pune for the offences punishable under Sections 394, 364 (A), 120(B), 341, 504, 506 r/w 34 of the Indian Penal Code and under Section 4(25) of Arms Act and Sections 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2 The prosecution case in short is that on 12/10/2018 at about 10.30 p.m., when the informant was proceeding towards his house on a motorcycle and had reached near Mamurdi, near Masurkar Farm, two

unknown persons came there and intercepted the informant. They forcibly made him sit on their motorcycle and took him towards the side of Mamurdi and stopped motorcycle in the darkness. The prosecution alleges that they abused and assaulted the informant with deadly weapon like sickle. After putting sickle on informant's neck, they forcibly took gold chain, gold ring and one mobile phone worth Rs.12,000/- and threatened him to kill. The informant accordingly lodged the report against two unknown persons.

3 During the course of investigation applicant and a juvenile in conflict with law came to be arrested. During the Test Identification Parade, the informant identified the applicant as the main accused. Even there was recovery of gold ornaments and mobile came to be recovered at the instance of applicant.

4 Mr.Patil, learned Counsel for the applicant, submits that the only evidence against the applicant is findings of the Test Identification Parade which was conducted after six months of the incident. This in itself creates a doubt as to the identity of the applicant. Although there are antecedents but having regard to the material on record, the same will not be of any help to the prosecution. Investigation is over. Charge-sheet has been filed. In such circumstances, the applicant deserves to be

enlarged on bail.

5 Smt. Anamika Malhotra, learned APP, on the other hand, submits that the applicant is a habitual offender and then invited my attention to the statement of co-accused, namely, Atish Vijay Kamble. Learned APP also invited my attention to the statements of Santosh Shivaji Bodake, Sunilkumar Hardev Singh, Ganesh Sheshrao Ghorhade and Sachin Ganpatrao Jagtap.

6 Perused investigation papers. I have also gone through the memorandum of Test Identification Parade.

7 First of all it may be noted from the FIR that the incident had taken place at about 10-30 p.m. It is alleged that the applicant and other co-accused not only intercepted him while he was proceeding towards his house with ornaments and cash amount but they made him to sit on their vehicle and then took him towards Mamurdi and stopped vehicle in a place where there was darkness. Now the question is how much time informant might have taken to memorize the description and features of those two unknown persons. It becomes clear from the FIR that he gave only description about their clothes and their physique. Interestingly, the informant nowhere gives their facial features and about

their height whereas the memorandum panchanama of Test Identification Parade reveals that while selecting the dummies the care was taken in respect of facial features, height and age of the dummies vis-a-vis the description given by the prosecution. I have already noted that except age, the cloths and the physique other remaining important factors, namely, facial features and the height were never given while lodging the FIR. This being so, how the investigation machinery selected dummies for the purpose of Test Identification Parade is a matter of guess and needs to be questioned. Since admittedly these material factors were not in the FIR and moreover, the informant was allegedly taken in a dark place, I doubt he could have identified the robber that too after a period of six months. The whole approach of the investigating officer is not aboveboard.

8 This takes me to the statements of prosecution witnesses. First statement is that of Smt. Nalini Vijay Kamble, who is the mother of juvenile. According to her, the applicant is a leader of organized gang and always uses different companion in committing the crime. Even her son was also taken in his gang by him and then she say all about the incident in question. According to her, this was told to her by her own son.

9 Then there is a statement of Atish Vijay Kamble allegedly recorded by ACP, Dehuroad, Pimpri Chinchwad. It must be remember here that this juvenile has not been charged with the provisions of MCOC Act and therefore, how far his statement will have baring on the case is matter to be left to the trial court to be decided at an appropriate stage.

10 Santosh Shivaji Bodake states in his statement that on 13/10/2018 at about 6-00 p.m. while he was sitting with his employer Sunilkumar Hardev Singh, an owner of two wheeler showroom, the applicant came along with his companion and told that he wants to sell a gold chain and if there is anybody to purchase it, he be informed. Similar statement is given by said Sunilkumar Hardev Singh. Interestingly, these statements came to be recorded on 20/02/2019 i.e. after four months of the incident.

11 Then there is a statement of Ganesh Sheshrao Ghorhade, who states that on 12/10/2018 the applicant had demanded moneys from him under threat but when he expressed his inability. The applicant then allegedly told that Choudhary Marwadi, resident of Lodha Scheme is a wealthy person having moneys and gold and he would rob him while he proceeds to his home after closing the shop. This statement again will

have to be tested at the time of trial. This statement is also given on 20/02/2019.

12 The last statement is that of Sachin Ganpatrao Jagtap, who states that since his motorcycle was stolen, he lodged the report and later on, this motorcycle was recovered from the applicant.

13 It further appears from the record that certain recoveries were effected at the instance of applicant and that is the only circumstance.

14 Having regard to the material on record, I do not find the evidence quite overwhelming and inspiring, particularly in the light of approach of prosecution conducting the Test Identification Parade. Although there are criminal antecedents but having regard to the totality of the facts and circumstances of the case and as also the material on record, in my view, Section 21(4) of the MCOC Act will not be a bar while allowing the application of the applicant.

15 In the aforesaid premise, I pass the following order.

ORDER

(i) Applicant-Sameer @ Sonya Jalinder Bodke shall be released on

bail in C.R. No. 560 of 2018 registered with Dehuroad Police Station, District- Pune on his executing P .R. bond in the sum of Rs. 25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The applicant shall not leave the jurisdiction of the trial court without prior permission of the trial Court.

(iv) The applicant shall not indulge into similar activities.

(v) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(vi) Bail before the trial Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

REKHA
PRAKASH
PATIL

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REKHA PRAKASH
PATIL
Date: 2021.12.14
14:13:15 +0530

Rekha Patil

(V. G. BISHT, J.)