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

BAIL APPLICATION NO. 1878 OF 2021

Deepak Nagnath Dhotre ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Mr.Aniket Nikam i/b. Mr. Aashish Satpute for the Applicant.
Mrs. Anamika Malhotra, APP for the Respondent -State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 30TH NOVEMBER, 2021
PRONOUNCED ON : 14TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 269 of 2014 registered with Solapur Taluka Police Station, Solapur for the offences punishable under Sections 394, 170, 504, 506 read with 34 of the Indian Penal Code (for short, “the IPC”) and Section 3 (1) (ii) (4) of the Maharashtra Control of Organised Crime Act (for short, “the MCOCA Act”).

2. It is the case of prosecution that on 31st December, 2014 in between 2.00 a.m to 3.30 a.m., when the informant was sleeping, accused Lakya @ Laxman Shyamrao Kale and Kisan Shyamrao Kale knocked the door referring themselves as policemen. When he did not open the door, both accused thrust swords through the hole of the door and broke the door. There was one more unknown person along with them.

3. The prosecution alleges that the said accused robbed him of three mobile phones, cash amount of Rs. 1700/- and one imitation mangalsutra. It is further alleges that thereafter the said accused left the house and again robbed one Dattatraya Gavli of his Hero Honda, cash amount of Rs.1700/- and a mobile. They further robbed one more victim Shravan Kumar Yadav of articles worth Rs. 20,900/-. Accordingly, the First Information Report came to be lodged.

4. It further appears that after obtaining necessary sanction, the provisions of the MCOCA Act were also applied against the applicant and other accused.

5. Mr. Nikam, learned Counsel for the applicant, submits that earlier the applicant was released on bail and it is only after application of the provisions of the MCOCA Act, his bail came to be cancelled. According to learned Counsel, the applicant has not been identified by any of the witnesses including informant and this very fact is admitted by none other than by the prosecution itself. Learned counsel then invited my attention to paragraph 11 of the affidavit of the Investigating Officer to substantiate his claim. In view of this, the applicant deserves to be enlarged on bail, argued learned Counsel.

6. Mrs. Malhotra, learned APP, on the other hand, submits that the affidavit filed by the Investigating Officer is self explanatory. Moreover, there are criminal antecedents and having regard to the nature of offence, the applicant does not deserve to be enlarged on bail.

7. Perused investigation papers. I have also gone through the affidavit of the investigating officer. Paragraph 11 of the said affidavit reads as under :

“11. No Test Identification parade was conducted as the accused were identified by the album containing photograph of the accused, shown by the Investigating Officer. It is pertinent to mention here that none of the witnesses, including the complainant has identified the present applicant”.

8. From the above, there remains no doubt that none of the witnesses including informant had identified the applicant. No other evidence is forthcoming to point out the culpability of applicant in the offence. Although, there are some criminal antecedents but having regard to the case in hand, when admittedly nothing is forthcoming against the applicant, those criminal antecedents will not help further the case of prosecution and consequently Section 21 (4) of the MCOCA Act will not come in the way of applicant

9. In view of above, I pass the following order:

ORDER

(i) Applicant- Deepak Nagnath Dhotre shall be released on bail in C.R. No. 269 of 2014 registered with Solapur Taluka Police Station, Solapur on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial Court proceedings accordingly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

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

(V.G.BISHT, J.)