

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 975 OF 2020**

Nikhil Ravindra Bamane	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Satyavrat Joshi, for the Applicant.

Mr.H. J. Dedhia, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th November, 2021.
PRONOUNCED ON : 22nd November, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 546 of 2017 registered with Hinjewadi Police Station, District- Pune for the offences punishable under Section 392 r/w 34 of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act ('MCOCA' for short).

2 It is the case of prosecution that informant is a driver by profession and at the relevant time was employee of Shree Travels,

Kagal, District-Kolhapur. On 28/11/2017 his employer directed him to take the passenger in Innova car bearing No. MH 10 AT 6700 and drop them to Mumbai. Out of the said passengers, one passenger wanted to return to Pune so the informant dropped the said passenger at Pune. At about 2-00 a.m. on 29/11/2017, the informant was on Mumbai-Bangalore highway and somewhere near Bhumkar Chowk his companion dropped him and took the Innova car with him. According to prosecution, as informant wanted to go to Kolhapur he was searching transportation. At about 3-00 a.m. one black Skoda heading from Mumbai was stopped by informant. He was given lift upto Kolhapur, however, it is alleged that the driver of the said Skoda car took 'U' turn. Thereafter, it is further alleged that the persons in the said Skoda car robbed the informant of his mobile headset of Rs.10,000/- and cash of Rs.1,000/-, driving licence, Voting Card and PAN Card. The informant accordingly lodged the report.

3 It further appears from the record that the informant again gave his supplementary statement on 13/12/2018 and then supplemented the contents of FIR by stating that the persons, who was sitting next to the driver, had brandished a weapon like Kukari at him and asked to handover all his belongings. He further stated that another three

persons ranging between age group of 25 to 30 also joined later on and while one of them caught hold of him others assaulted and abused him and thereafter all the accused persons left the said Skoda car.

4 On the basis of said allegations, the offence was registered and provisions of MCOCA were invoked.

5 Mr. Joshi, learned Counsel for the applicant, at the very outset, submits that the gang leader in the present crime has already been released by this Court (Coram:Bharati Dangre, J.) on 5th April, 2021 and therefore, one of the ground is that of parity. The learned Counsel then next submits that although the Test Identification Parade was conducted in which the applicant was identified but the said Test Identification Parade was held after long gap and before that the applicant was shown to the informant in the police station. Learned Counsel invited my attention to the statement of the informant dated 25/01/2018 to substantiate his submission. As far as criminal antecedents are concerned, the antecedents are same *qua* the main accused, who is already released on bail. The alleged recovery was in different crime number. For all these reasons, the applicant deserves to be released on bail. According to learned Counsel, he is ready to abide any conditions

which may be imposed by this Court.

6 I have gone through the Affidavit of the Assistant Commissioner of Police, Wakad Division, Pimpri Chinchwad.

7 Mr. Dedhia, learned APP, on the other hand, vehemently opposed the submissions by contending that the applicant has been duly identified by the informant in the Test Identification Parade. There are antecedents. Therefore, the application may not be considered and at the most, the learned Trial Court be directed to expedite the trial.

8 Perused the FIR and investigation papers. Perusal of FIR would show that the informant initially had given the description of two unknown persons who had robbed him sans weapons. However, the informant again gave his supplementary statement on 13/12/2018 i.e. after more than a year and for the first time he complained of five persons that appears to be not plausible and acceptable. For the simple reasons, according to him, he was also assaulted by the other persons who had also joined earlier two persons, who were in the car. Had it been so, he immediately would have rushed to police station.

9 Coming to the Test Identification Parade. There is no denial from the side of prosecution that Test Identification Parade was carried out after a long gap. Apart from this disturbing aspect, there is again statement of informant dated 25/01/2018 which clearly shows that on the said date he was summoned in the police station wherein the seized muddemal was shown to him and as also he was told the names of all the accused. This apparently raises a doubt as to the truthfulness of the Test Identification Parade.

10 Lastly, the antecedents. Learned Counsel again invited my attention to the chart annexed to the Sanction Order wherein main accused at Sr. No. 4 and present applicant at Sr.No.5 have identical criminal antecedents. I have already pointed out that the main accused Mukesh Kantilal Chavan has already been released on bail by this Court on 05th April, 2021. Therefore, the said antecedents *qua* the present applicant will not be weighing factor in favour of prosecution.

11 I also note from the Affidavit of Assistant Commissioner of police and more particularly from para 23 wherein details of the offences registered against the Nikhil Ravindra Bamne are given and point out from the said paragraph that except offence at Sr. Nos.2,3,4 and 5 no

other offence registered at Sr. Nos. 1,6,7,8 and 9 were taken into consideration by the sanctioning authority which is apparent from the Sanction Order.

12 For the aforesaid reasons, I am inclined to allow the application. Hence, the following order.

ORDER

(i) Applicant- Nikhil Ravindra Bamane shall be released on bail in C.R. No. 546 of 2017 registered with Hinjewadi Police Station, District-Pune, on his executing P .R. bond in the sum of Rs. 50,000/- with one or more sureties in like amount.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer.

(iii) The applicant shall not tamper with the prosecution evidence.

(iv) The applicant shall report to the Investigating Officer, on first Monday of every Month between 10.00 a.m. to 2.00 p.m. until the charge is framed. After the charge is framed, it is open for the Special

Court to stipulate a condition of marking presence before it so as to ensure the presence of the applicant for trial.

(v) It is made clear that the observations made herein-above are prima facie in nature and confined to adjudication of present Bail Application only.

(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.)

REKHA
PRAKASH
PATIL

Digitally signed
by REKHA
PRAKASH
PATIL
Date:
2021.11.22
13:32:24
+0530