

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2347 OF 2021

AMOL LALA @ LALU KALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Dilip B. Shinde i/b. Mr.Sachin Bhavar, Advocate for the Applicant.

Mrs.P P Shinde, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 24th NOVEMBER 2021
PRONOUNCED ON : 8th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.738 of 2018 registered with Police Station Karmala, for offences punishable under Section 395, 397, 342 of the Indian Penal Code (IPC) and under Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

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2 It is the case of the prosecution that on 19th September 2018 six unknown persons in the age group of 25 to 30, their faces covered with black cloth, with a view to commit dacoity assaulted the informant by means of an iron rod on her back, waist and thigh and looted an amount of Rs.57,000/-, gold ear tops (weighing 10 gms) worth Rs.25,000/-, two gold ganthan (weighing 30 gms and 40 gms) worth Rs.75,000/- and Rs.90,000/- respectively and a mobile phone worth Rs.1,000/-. Informant, accordingly, lodged the report.

3 Mr.Dilip Shinde, learned counsel for the applicant, submits that the First Information Report (FIR) was registered against unknown persons and as such no prima facie case is made out against the applicant, although it is alleged that Rs.3,000/- has been recovered from the applicant but that too after one year. No Test Identification Parade is carried out till date. Similarly, the applicant is neither a gang leader nor he is a member of any organized crime syndicate. Therefore, the prosecution against the present applicant under provisions of

MCOC Act itself is not maintainable in law. Investigation is completed and charge-sheet has been filed. In such circumstances, no useful purpose would be served by keeping the applicant behind the bars, argued learned counsel.

4 Smt.P. P. Shinde, learned APP, on the other hand, opposed the submissions and invited my attention to the reply filed by the Investigating Officer. The learned APP mainly placed reliance on the confessional statement of the applicant and would submit that in view thereof and as also the antecedents, the application does not deserve consideration.

5 The learned counsel for the applicant, by way of reply, submits that the so called confessional statement has been retracted by the applicant before the learned Chief Judicial Magistrate and in such circumstances, practically there is no evidence to connect the applicant to the alleged offence.

6 Perused the investigation papers. I have also gone through the Affidavit-in-Reply of the Investigating Officer. At the outset, I may mention here that some of the accused have already been enlarged on bail by the learned Special Judge under the MCOC Act, Pune.

7 Admittedly, the incident had taken place in the year 2018. It is the case of prosecution that all the accused had covered their faces with black cloth. Till date, no identification parade has been carried out. It is only on the basis of so called confessional statement that the present applicant has been arraigned as an accused. In this regard, I may note from the record that the so called confessional statement has been retracted by the applicant before the learned Chief Judicial Magistrate on 30th September 2019. The statement of applicant was recorded by the learned Chief Judicial Magistrate and it would appear that his thumb impression was obtained forcibly and his statement was not recorded as per his say. In such circumstances, much weightage cannot be given to the so called

confessional statement. As far as recovery of Rs.3,000/- is concerned, that is effected after more than a year. There is no other evidence which would, in any way, connect the applicant with the alleged offence.

8 As far as criminal antecedents are concerned, which are given in the Affidavit-in-Reply, that by itself will not be sufficient, particularly when other cogent and convincing evidence about the involvement of the applicant in the alleged offence is lacking. This being so, bar of Section 21(4) of the MCOC Act will not come in way of the applicant.

9 For all the aforesaid reasons, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Amol Lala @ Lalu Kale shall be released on bail in Crime No.738 of 2018 registered with Police Station Karmala, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) 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.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)