

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

BAIL APPLICATION NO. 1385 OF 2019

Kamlesh Ramlakhan Verma Applicant

v/s.

The State of Maharashtra Respondent

Mrs. Roshni J. Singh a/w. Mr. Harekrishna Mishra for the Applicant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th JULY, 2021.

P. C. :-

. This is an Application for bail under Section 439 of Cr.P.C. filed by the aforesaid Applicant who is facing trial in MCOC Case No.6/2018 for offences punishable under Sections 120(B), 308, 380, 401, 411, 414, 454, 457, 465, 467, 468, 471, 473, r/w. 34 of the Indian Penal Code (IPC) and Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime (MCOC) Act, 1999.

2. The said case arises from C.R.No.I-136/2017 registered with Sanpada Police Station, Navi Mumbai pursuant to the first information report lodged by Seema Kumari, Bank Manager of Bank of Baroda. The FIR reveals that the bank was closed on Friday i.e., 10/11/2017 at about 07:30 p.m. The next two days being Saturday and Sunday, the

bank was opened on Monday i.e., 13/11/2017. Upon opening the strong room of the bank, it was noticed that a tunnel was constructed from the strong room to gala situated near the bank. It was found that several lockers were broke open and gold ornaments from the lockers were stolen.

3. Mr. Harekrishna Mishra, learned counsel for the Applicant submits that the Applicant is not involved in commission of the crime. He states that the other accused against whom similar accusations are made and who are similarly placed, are being released on bail. Therefore, the present Applicant is also entitled for bail on the ground of parity. *He has relied upon the decision of the Apex Court in Union of India v/s. K.A. Najeeb AIR 2021 SC 712*, wherein the accused were released on bail.

4. He further states that the Applicant is in custody for over 3½ years. He further submits that the Applicant has already retracted from his confession and hence, no reliance can be placed on such confession. He submits that investigation is completed. Gold ornaments have already been recovered and that the presence of the Applicant is no longer required in custody. He therefore submits that

this is a fit case to release the Applicant on bail. He has relied upon the decision of this Court in Criminal Bail Application No.1858/2018, Bail Application No.577/2019, Bail Application No.749/2019 and Bail Application No.3611/2019.

5. Mr. S.V. Gavand, learned APP has opposed the Application on the ground that the Applicant has played an active role in digging the tunnel. Moreover, some of the gold ornaments have been recovered from the Applicant, which *prima facie* proves his involvement in commission of the crime. He further submits that the confessional statement of the Applicant corroborates the statement of the main accused – Mohiddin Shaikh, who is the head of Organized Crime Syndicate. Learned APP further submits that the crime is of serious nature and hence, the Applicant is not entitled for bail.

6. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. The crime was initially registered against unknown persons. In the course of investigation, it was revealed that the accused no.6 and other co-accused had entered into a criminal conspiracy to commit theft of the gold ornaments from the bank lockers. Accordingly, on the

basis of false and fabricated Aadhar Card and Pan Card, he took the adjoining gala on rent. They dug a tunnel from the said gala till the strong room of the bank and broke open several lockers and committed theft of the gold ornaments. In the course of the investigation, the police seized hack saw blade, iron rods, spade, drill machine and other instruments used for digging the tunnel from the gala to the strong room. The Applicant and the other accused came to be arrested in the course of the investigation.

8. The investigation revealed that the accused persons had formed Organized Crime Syndicate under the leadership of Hajid Ali Sabdar Ali Mirza Baig and the Applicant and the co-accused are the members of the said crime syndicate and are involved in committing series of crimes. Accordingly, the provisions under the M.C.O.C. Act came to be invoked. In the course of the investigation, the statement of the Applicant was recorded under Section 18 of the M.C.O.C. Act, which prima facie showed his involvement in the crime. Though the Applicant retracted from the confessional statement, the confessional statement of the main accused – Mohiddin Shaikh, recorded under Section 18 of M.C.O.C. Act also indicates that the Applicant was involved in digging the tunnel right up to the strong room. The material

on record also reveals that pursuant to the disclosure statement made by the Applicant, part of the stolen gold jewellery has been recovered from the Applicant which prima facie shows the involvement of the Applicant in the aforesaid crime. The material on record thus prima facie proves involvement of the Applicant in a well planned conspiracy of committing theft of gold ornaments from the bank lockers.

9. As regards the claim of parity, it is to be noted that in ***Jumman Ali Abdul Samad Shaikh v/s. State of Maharashtra in Criminal Bail Application No.1858 of 2018***, this Court has observed that there was no prima facie material to show that the said co-accused was involved in constructing the tunnel or that he had conspired in any manner in commission of the crime. In the case of ***Momin Amin Khan v/s. The State of Maharashtra in Criminal Bail Application No.3611 of 2019***, this Court has observed that no gold ornaments were recovered from the said accused and than there was no prima facie material to show his involvement in the crime. Similarly, in the case of ***Rajendra Jagannath Wagh v/s. State of Maharashtra in Criminal Bail Application No.749 of 2019*** and ***Mehrunisa Shadab Sayyed @ Sonia v/s. The State of Maharashtra in Criminal Bail Application No.577 of 2019***, there was no recovery at the instance of the Applicant but the recovery was at the

instance of co-accused. Hence, it was held that it is doubtful whether the Applicant could be held guilty of the offence under the M.C.O.C. Act.

10. The principle of parity in Criminal Case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to the co-accused [*Ajmer Singh v/s. State of Haryana (2010) 3 SCC 746*]. In the instant case, the co-accused were ordered to be released on bail since there was no prima facie material to implicate and/or to connect them with the said crime whereas the material on record prima facie shows that the Applicant was involved in digging the tunnel from the adjoining gala upto the strong room of the bank and gold ornaments have been recovered from his possession. The Applicant is not similarly placed and as such, he cannot seek bail on the ground of parity.

11. In the case of *Union of India v/s. K.A. Najeed* (supra), the accused were charged for offences punishable under Section 307 which is punishable for maximum imprisonment of ten years. In the said case, the High Court had ordered to enlarge the accused on bail since the trial was not likely to commence in the near future. The said bail

order was stayed by the Apex Court and as a result, the Applicant had spent nearly five years and five months in judicial custody. The Apex Court did not interfere with the order of the High Court considering the length of period spent by the accused in the custody.

12. In the instant case, as stated earlier, the Applicant is facing trial for offences, punishment for which can extend upto life imprisonment. The offences are of serious nature. The Applicant is a native of Uttar Pradesh and the possibility of the Applicant absconding cannot be ruled out. Keeping in mind the above facts and circumstances & the societal interest, it would not be just and proper to release the Applicant on bail. Furthermore, the statement has been made by the learned APP that an endeavour will be made to conclude the trial as expeditiously as possible and in any event within a period of two years from the date of this order.

13. Considering the above facts and circumstances, in my considered view, the Applicant is not entitled for bail. Hence, the Bail Application is dismissed.