

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2272 OF 2021

MAHESH KAJUSINGH DAMOR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Anjali Patil, Advocate for the Applicant.

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

CORAM : V. G. BISHT, J.

**RESERVED ON : 23rd NOVEMBER 2021
PRONOUNCED ON : 6th 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.297 of 2015 registered with Police Station Talegaon Dabhade, Pune, for offences punishable under Section 395,397, 307 of the Indian Penal Code (IPC) and under Section 3(25) and

AVK

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27 of the Arms Act and under Section 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

2 It is the case of prosecution that informant Manoj Mohanlal Palresha is a goldsmith and his running a shop by name and style “Kamla Jewellers”. It is alleged that on 2nd October 2015, at about 7.00 p.m., about ten to twelve persons entered into his shop armed with iron rods. They started assaulting the informant and four other workers in the said shop, broke the glass of showcase and looted the jewellery worth Rs.25 lacs. The informant, accordingly, lodged the report.

3 Mrs.Anjali Patil, learned counsel for the applicant, submits that two accused have already been released on bail by this Court and therefore, she seeks parity. There is no recovery nor any antecedent against the applicant. It is only on the basis of confessional statement that the applicant has been roped in.

4 Mrs. Anamika Malhotra, learned APP, on the other hand, opposed the submissions by contending that there is confessional statement of accused Kamlesh Cheniya Rathore from which it is very much clear that the applicant was one of the accused who participated in the crime. There is no merit in the application and the same is liable to be rejected.

5 Perused the Affidavit-in-Reply filed by the learned APP. At the outset, it may be noted that the other two accused Kamlesh Cheniya Rathore and Thawariya Toliya Bilwal have been enlarged on bail by this Court (Coram : Revati Mohite Dere, J.) on 6th July 2017 and 17th February 2021 respectively. I may note here that the confessional statement which is pressed only into service by the learned APP is that of Kamlesh Cheniya Rathore. It is also not in dispute that no recovery of any weapon / article has been effected at the instance of the applicant. Co-accused Kamlesh Cheniya Rathore, who is admittedly on bail, was the driver of the vehicle in which the applicant along with others travelled. His statement is recorded under Section 18 of the

MCOC Act. Although the said co-accused has given the name of present applicant, but there is nothing to show from his statement that any dacoity was planned by the applicant along with other accused named by him in his statement. Except the said confessional statement of co-accused Kamlesh Cheniya Rathore, who is already admitted on bail by this Court, learned APP is unable to point out any other incriminating material against the applicant. Similarly, no criminal antecedents are forthcoming. Since the co-accused, namely, Thawariya Toliya Bilwal has been released on bail by this Court and the fact that the present applicant is also similarly placed, I do not see any reason not to allow the application on the ground of parity. The applicant is in custody since 3rd October 2015. Not a single witness has been examined and the trial will take its own time.

6 Considering the aforesaid material qua the applicant, the bar of Section 21(4) of the MCOC Act will also not apply. This being so, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Mahesh Kajusingh Damor shall be released on bail in Crime No.297 of 2015 registered with Police Station Talegaon Dabhade, Pune, on his executing P.R.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (iii) The applicant shall attend the concerned Police Station on the first Monday of every month between 11.00 a.m. to 1.00 p.m. till the conclusion of the trial.
- (iv) The applicant shall not leave Pune District, without the permission of the trial Court, till the conclusion of the trial.

- (v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.
- (vi) The applicant to co-operate with the conduct of the trial and attend the Court on every date.
- (vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.
- (viii) Bail before the trial Court.
- (xi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(x) 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.

(xi) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)