

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

CRIMINAL BAIL APPLICATION NO.2811 OF 2021

Muthukumar Chairman Nadar Applicant

versus

The State of Maharashtra Respondent

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- Mr.Rahul Arote, Advocate for Applicant.
- Mrs.Veera Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th DECEMBER, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.169 of 2016 registered with N.R.I. Sagari Police Station under Section 395, 397, 120-B of the Indian Penal Code, Section 37(1) r/w 135 of Maharashtra Police Act and under Section 3(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999,. This is the second bail application preferred by the same accused. Earlier he had preferred Criminal Bail Application No.1758 of 2020 on 05/07/2021. This Court had passed following order

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“1. After arguing for some time, when I expressed my disinclination to grant relief in this application, learned counsel for the applicant prays for unconditional withdrawal of this application.

2. Permission is granted. The application is allowed to be withdrawn unconditionally and is disposed of as such.”

1. Now the second bail application is preferred on the ground of change in circumstances, which as claimed by the Applicant is that the co-accused Murgandi @ Kumar Samungsundarum Tevar is granted bail by this Court (Coram : Prakash D. Naik, J.) vide order dated 02/09/2021 in Bail Application No.201 of 2020. Similarly by another order dated 28/06/2021 passed in Bail Application No.2910 of 2019 another co-accused Iqbal Kasam Pathan @ Pappu was granted bail. Learned counsel for the Applicant states that this particular order dated 28/06/2021 though was passed earlier,

was not brought to the notice of the Court. When his earlier bail application was decided on 05/07/2021.

2. I have considered these submissions in the interest of justice.
3. The prosecution case is that five unknown persons wearing caps and and hiding their faces entered the office of a financial company with deadly weapons like Koyta and pistol. At the point of weapons they removed cash as well as gold ornaments and other articles worth Rs.6,09,50,000/-. On this basis FIR is lodged.
4. The prosecution case is that the offence was committed at the behest of the main accused Arputraj @ Appu Palraj Nadar. According to the prosecution case the main accused who had entered those premises were Ysuva @ Prakash, Mohammed Sharif Abdul Kadar, Sudishtaraj @ Sudeshrana, Ikbale Kasam Pathan @ Pappu and Murgani @ Kumar Saugsundaram Tewar. The role

assigned to the present Applicant is that the main accused Arputraj had given gold ornaments robbed in this offence for safe keeping to the Applicant.

5. According to learned counsel for the Applicant, the main accused ho had actually entered the premises to commit robbery were granted bail. The Applicant's role is comparatively minor. He has no antecedents.

6. I have considered these submission, particularly in respect of change in circumstances. As far as Murgandi is concerned, his role is different though it is observed in the order that he was identified but recovery of gold at his instance was not identified as a stolen property. The observations in the order also mentioned that the release of co-accused Iqbal Kasam Pathan on bail was taken into consideration and Murgandi's release on bail was based on certain observations made in that order. As far as Iqbal Kasam Pathan is concerned, this Court (Coram : Bharati Dangre, J.) had observed that veracity of test Identification

Parade was dubious and recovery evidence was also not very cogent. On this ground Iqbal Pathan was granted bail.

7. The Applicant's role and roles of Iqbal Pathan and Murgandi are totally different. Apart from that, the main consideration is the present application is the quality of evidence against the present Applicant.

8. In this context the Applicant's confessional statement recorded under Section 18 of MCOCA is important. His confessional statement was recorded by Deputy Commissioner of Police, Special Branch, Navi Mumbai. In the confessional statement he has stated that he was acquainted with the main accused Arputraj @ Appu Palraj Nadar. They were in touch with each other. Arputraj used to visit the Applicant's house at Dharavi. He became quite friendly Arputraj. In April 2016 the accused Arputraj introduced this Applicant to Iqbal and Mohd. Sharif as well as Prakash Yesua, Murgandi kumar and Khimu Nadar. On 06/08/2016 i.e. on the date of incident, at about 05.30 p.m.

Arputraj and other accused came to the house of this Applicant. Arputraj placed cash and gold ornaments on the bed in the Applicant's room. The Applicant helped Arputraj in weighing the ornaments. The ornaments were divided to distribute shares of all the accused. The Applicant received 176.66 gms. gold jewellery and Rs.50,000/- in cash. Arputraj told this accused that they had committed robbery and the ornaments robbed in the incident. On 10/08/2016 Arputraj told him telephonically that he was going out of Mumbai and instructed this accused to keep share of Arputraj with him, which was kept with Manoj Chikane. On 19/08/2016 Arputraj was arrested. On 27/08/2017 police came to the Applicant's house. At that time, the Applicant handed over the ornaments weighing 176.33 grms of gold and Rs.50,000/- to the police which were given to him by Arputraj. On 15/09/2016 Arputraj called him telephonically and told him to collect Arputraj's share which was kept with Manoj. Accordingly this Applicant took those ornaments from Manoj and kept them in his house at his native place. The Applicant used to meet Arputraj on every date in Court. After a few days on the instructions of

Arputraj he gave same ornaments to one Khimu Nadar. On Arputraj's instructions he gave some gold to some other persons. On 08/09/2017 at the instance of the Applicant, the police recovered 50.3 grms of gold and further recovery was effected against Khimu. At his instance 1490 gms. of gold was recovered. The Applicant was arrested on 09/09/2017.

9. Learned counsel for the Applicant submitted that the co-accused as mentioned earlier was granted bail by this Court and therefore there is no reason to deny bail to the present Applicant. The Applicant had not taken part in the actual robbery. His role is minor. The Applicant is in custody since 09/09/2017 and there is no other case registered against him. Therefore leniency be shown to him. The confessional statement is not truthful.

10. Learned APP opposed this application, relying mainly on the confessional statement of the Applicant.

11. I have considered these submissions. Case of other

accused who are granted bail, is different. The evidence regarding their participation was found to be insufficient for keeping them in custody. The Applicant's role is reflected in his confessional statement. The confessional statement is relevant. It is not possible to hold that the confessional statement cannot be relied upon at this stage. The role attributed to the present Applicant shows that the Applicant was aware that Arputraj and others had committed robbery and had in fact given substantial part of the ornaments including the share of Arputraj to this Applicant. He had kept them in his custody right from the day when the robbery was committed, after Arputraj was arrested and even subsequent thereto. Therefore his case is squarely covered under sub-section 3(5) of MCOCA, which reads thus;

“Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.”

12. The Applicant's case squarely falls within this section. Therefore it is not possible to record the satisfaction under Section 21(4) of MCOCA that the Applicant has not committed any offence under MCOCA and is not likely to commit similar offence in the future. The Applicant has not only kept the property with him and helped the main accused, but his role is distinguishable from other accused. He was well aware of the robbery and the activities of Arputraj.
13. No case for grant of bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)