

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

CRIMINAL BAIL APPLICATION NO. 2112 OF 2017

Thawariya Toliya Bilwal

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ashok Kumar Dubey a/w Mr. Anil Kumar Pandey for the Applicant

Mr. A.R. Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 17th FEBRUARY 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 297 of 2015 registered with the Talegaon Dabhade Police Station, Pune, for the alleged offences punishable under Sections 395, 397, 307 of the Indian Penal Code; under Sections 3(25) (27) of the Arms Act and under Sections 3(1)(ii), 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

3 Learned counsel for the applicant submits that there is no material on record to connect the applicant with the alleged offence. He submits that merely because there are cases registered as against the applicant in Madhya Pradesh, will not be a ground to deny the applicant bail, in the absence of any cogent and incriminating material to connect the applicant with the aforesaid alleged offence. He submits that neither the applicant has been identified in the test identification parade, which was held by the police, nor is there any recovery at the instance of the applicant.

4 Learned A.P.P opposes the application. Learned A.P.P has filed an affidavit of Ganpatrao Sadashiv Madgulkar, Deputy Superintendent of Police, Dehuroad Division, Pune (Rural), Pune, to oppose the application. Learned A.P.P is, however, unable to point out any incriminating material as against the applicant in the present C.R.

5 Perused the papers. According to the complainant-Manoj Palresha, he is doing the business of goldsmith and is running a shop by the name “Kamla Jewellers” for the last 20 years. He has alleged that the incident took place on 2nd October 2015 at about 7:00 p.m. According to the complainant, about 10-12 persons entered his shop; that the said persons were armed with iron rods; that the said persons started assaulting

the complainant and 4 others working in the said shop; that the said persons also broke the glass of the showcase and looted jewellery worth about Rs. 25 lacs. It is alleged that while the said accused were fleeing, police reached the spot, as a result of which, one of the accused fired a bullet in the direction of the police and the others pelted stones on the police. None of the accused were arrested on the spot. The complainant-Manoj lodged an FIR as against 10-12 unknown persons. During the course of investigation, the accused were arrested in front of Saundarya Hotel, Indori, Taluka Mawal, District Pune on 3rd October 2015. The applicant was present with the other accused. The arrest panchanama dated 3rd October 2015 shows that all the accused were arrested from the said spot, including the driver of the vehicle i.e. Kamlesh Rathod, also an accused.

6 Admittedly, the applicant has not been identified by any of the witnesses. There is no recovery of any weapon/article at the instance of the applicant. Similarly, no Section 18 statement of the applicant has been recorded. As far as co-accused-Kamlesh Rathod, the driver of the vehicle in which the applicant travelled with others is concerned, his statement under Section 18 of the MCOC Act was recorded. In the said statement, Kamlesh Rathod has not named the applicant. Co-accused-Kamlesh Rathod was enlarged on bail on 6th July 2017, having regard to the fact that

he had no knowledge that dacoity was being planned or was going to be committed by the accused and more particularly, Kamlesh Rathod's vehicle was hired for consideration for travelling by the co-accused. Infact, the confessional statement of Kamlesh Rathod reflected that he had no knowledge that dacoity was planned by the co-accused.

7 No doubt, the applicant has antecedents i.e. cases registered against him in Madhya Pradesh. However, in the present case, *prima facie*, there is no material to show the applicant's complicity. Learned A.P.P is also unable to point out any material to connect the applicant to the alleged crime, except the fact that he was arrested with all other co-accused. The applicant is in custody since 3rd October 2015 and till date, not a single witness has been examined. It is informed that the prosecution intends to examine 30 witnesses.

8 Considering the aforesaid material *qua* the applicant, the bar of Section 21(4) of the MCOC Act will not apply. Accordingly, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iii) The applicant shall not leave Pune District, without the permission of the trial Court, till the conclusion of the trial;
- (iv) The applicant shall not tamper the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (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 cooperate with the conduct of the trial and attend the Court on every date;
- (vii) The applicant to file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9 The application is allowed in the aforesaid terms and is accordingly disposed of.

10 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11 All concerned to act on the authenticated copy of this order.

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REVATI MOHITE DERE, J.