

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

CRIMINAL BAIL APPLICATION NO.2423 OF 2019

Naseem Batullah Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Akash Vijay i/b Ms. Trupti Shetty, Advocate for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 18TH 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 CR No. 337/2015 registered with Vile Parle Police Station, Mumbai, for the alleged offences punishable under Sections 395, 363, 341, 412, 468, 201 and 170 of the Indian Penal Code; Sections 3 and 25 of the Indian Arms Act and Sections 3(1) (ii), 3 (2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (in short ‘MCOC Act’).

3. Learned counsel for the applicant submits that there is no material to connect the applicant with the alleged offences. Learned counsel for the applicant further submits that although there is a recovery of 84 gold pieces at the instance of the applicant, the same have not been identified by the complainant, as being the very same items that had been stolen. She submits that there are several discrepancies in the prosecution case, rendering the prosecution case suspect. She submits that the applicant is in custody since 25th October 2015 i.e. for more than 5 years and that till date not a single witness has been examined in the said case. She further submits that what is recovered from all the accused is more than what the prosecution case is. She submits that the applicant has no antecedents, much less a case registered with the gang leader Rahul Gopinath Kanhyalkar. She submits that since there is no material to connect the applicant to the alleged offence, the bar of Section 21 (4) of the MCOC Act, would not apply.

4. Learned counsel for the applicant has tendered an undertaking of the applicant. The same is taken on record. In the said undertaking the applicant has undertaken that he will not leave the jurisdiction of Mumbai and Thane city and has also undertaken that he will attend the trial court on every date.

5. Learned APP opposes the application. Learned APP has filed an affidavit of Mr. Chandrashekhar A. Gaikwad, Assistant Commissioner of Police, Vakola Division, Mumbai-400099 for opposing the said application. Learned APP does not dispute the fact that the applicant has no antecedents and that what is recovered in the present case is more than what is alleged by the prosecution. He submits that the applicant had taken the complainant's Aactiva Scooter, when the complainant was made to forcibly sit in the vehicle by the other co-accused. He further submits that there is recovery of 84 small gold pieces at the instance of the applicant and that the applicant has been identified in the test identification parade. Learned APP, however, does not dispute the fact that not a single witness has been examined till date and that the applicant is in custody since 25th October 2015.

6. Perused the papers. According to the complainant- Mahendrakumar Saini, he was working with M/s Jai Mata Di Air Services at the Kalbadevi office, Mumbai. The complainant has stated that they were having branch offices at Chennai and Hyderabad. According to the complainant, customers would send gold ornaments, gold bars and diamond jewellery through their company and that they would deliver the same to the respective parties at Mumbai; that their office would send the jewellery by

Jet Airways and that their office would deliver the said ornaments to the customers of the said dealers in Mumbai.

7. The complainant has alleged that on 20th October 2015 at about 11.00 p.m. Mr. Narendra Saini, head of M/s Jai Mata Di Company informed him on phone, that on 21st October 2015 at about 9.00 am, jewellery parcels would be coming to Mumbai by Jet Airways. He has stated that one Satishkumar Saini contacted him on 20th October 2015 at about 11.15 p.m. and informed him that one parcel has been sent to Mumbai. The complainant has alleged that on 21st October 2015 at about 10.30 a.m. he alongwith Mr. Pawankumar Saini reached the airport on his two wheeler i.e. Aactiva bearing no. MH-01-AZ-2170; that they collected two boxes containing jewelry, etc. from the Jet cargo office sent from the Chennai and Hyderabad offices; that after receiving the said boxes, he proceeded towards his residence at Vile Parle East, Mumbai for sorting out the said jewellery, on his two wheeler; that he had kept the said boxes on the footrest between his feet on the scooty; that when he reached a chowk in front of Kurla Garage, four unknown persons came there, accosted him and informed that they were from the Dahisar Crime Branch office; that from the said four persons, three persons forcibly took the complainant in their white car; that the fourth person took hold of his two wheeler; that

thereafter, they took him in a car towards the western express highway, snatched his two mobiles and was forced him to alight from the car, at the western express highway at Jogeshwari, Mumbai.

8. According to the complainant, he could not see his Activa Scooter and the person driving the same, when he alighted from the car at Jogeshwari. Pursuant to the said incident, Mahendrakumar Saini lodged the aforesaid complaint/FIR with the Vile Parle Police Station. In the supplementary statement, which was recorded on 27th October 2015, the complainant has stated that there were five persons who took the ornaments and that one of them took his scooter and the other four forcibly made him sit in the car; that one of them had a revolver and was threatening to kill him, pursuant to which, the provisions of Arms Act were added.

9. During the course of investigation, the applicant was arrested on 25th October 2015. After investigation was complete, chargesheet was filed as against the applicant and other co-accused. There is recovery of gold pieces at the instance of the applicant. However, it appears that no statement has been recorded of any witness with respect to whether the gold pieces were part of the consignment that was stolen. It appears that the gold seized from all the accused is more than what was allegedly stolen. The applicant is in

custody since 25th October 2015 i.e. more than five years and till date not a single witness has been examined. It appears that the prosecution intends to examine 100 witnesses as shown in the chargesheet, in the said case.

10. The applicant is in custody for more than five years. The possibility of the trial concluding soon appears to be bleak. The minimum sentence under the MCOCA, if convicted is ten years. The applicant admittedly has no antecedents. The applicant has filed an affidavit-cum-undertaking that he will not leave the jurisdiction of Mumbai and Thane and that he will attend the trial. The said affidavit-cum-undertaking is accepted.

11. Having regard to what is stated herein above, the application is allowed and the applicant is 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. 25,000/- (Rs. Twenty Five Thousands Only) with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon

from the date of his release.

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released 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;

(iv) The applicant shall not leave the jurisdiction of Mumbai and Thane City, without prior permission of the Court, till conclusion of the trial.

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all the dates, unless exempted;

(vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

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

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

13. 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.

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

REVATI MOHITE DERE, J.