

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2650 / 2019

Sagar Laxman Sonawane

Age: 25 years, Occ: Nil

R/at: Room No.1, Capricom,

Building No.17, Evershine City

Vasai (East), Dist: Palghar

.....**Applicant**

V/s.

The State of Maharashtra

(at the instance of Tulinj

Police Station)

....**Respondent**

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Mr. Tanvir Nizam a/w. Mr. Premlal Krishnan, Mrs. Mariam Nizam, Mr. Prestov Dias i/by. Pan India Legal Services LLP, Aadvocate for the applicant.

Mr. S.R. Agarkar, APP for State.

PSI-Mr. S.B. Bhosle from Tulinj Police Station present.

CORAM : SANDEEP K. SHINDE, J.

RESD ON : 18TH FEBRUARY, 2021.

PRONOUNCED ON : 26TH FEBRUARY, 2021.

P.C. :

1. Heard learned Counsel for the applicant and learned APP for State.

2. Applicant seeks his enlargement on bail in connection with Crime No. 1121/2018 registered with Tulinj Police Station for the offences punishable under Sections 392, 411, 34 of the Indian Penal Code and Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crimes, Act ("MCOC Act" for short).

3. Prosecution case in brief is, that on report by Shital Ramdas Patil, Crime No.1121/2018 was registered on 19th October, 2018 under Section 392 of the Indian Penal Code against three unknown persons, wherein she alleged that on 29th September 2018, at around 19:00 hrs, while passing through D.Mart, Near Saraswati Building, three motorcycle-borne persons snatched 12gm gold chain, from her neck and fled.

4. Applicant was apprehended on 29th November, 2018; but enlarged on bail on 6th December, 2018.

5. An, application was moved by the prosecution under Section 439(2) of the Criminal Procedure Code on February, 2019 seeking cancellation of bail granted to the applicant vide Criminal Misc. Application No.130/2019 on the ground that, in the course of

investigation, applicant's complicity in 'organised crime', individually and/or jointly with motive of gaining undue financial gain for himself as member of Organised Crime Syndicate was revealed and that approval has been granted under Section 23(1)(a) of the Act by the authority vide order dated 5th January, 2019 to prosecute him under Section 3 of the MCOC Act. Thus, the learned Additional Sessions Judge-II, Thane vide order dated 2nd April, 2019 cancelled the bail granted to the applicant.

6. Before advertng to the submission of the learned Counsel for the applicant, in support of the application, it may be stated that,

(i) applicant herein was arraigned as an accused in Crime No.111/2018, 136/2018, 1029/2018, 1055/2018 and Crime No.1107/2018 (five offences) and accused in C.R. No.1121/2018 (subject C.R.) on 28th November, 2018 at one stroke on the disclosure of the co-accused, Akshay Salvi and Akhtar, who were arrested on 27th November, 2018;

(ii) in the aforesaid five offences, Akhtar, is cited to be a Head of the Crime Syndicate, of which the applicant is alleged to be a Member;

(iii) prosecution has also recorded, confession of Akhtar (Head of the Crime Syndicate) on 18th April, 2019; and

(iv) Test Identification Parade was held on 16th April, 2019, in relation to Crime No.1121/2018 only and not in relation to the five crimes, as stated above.

7. The learned Counsel for the applicant would argue that, Akhtar, whose confession has been recorded under Section 18 of the MCOC Act has resiled from Part-III of the confession. Relying on the retracted confession, Counsel would argue, the applicant stood fully absolved, in as much as, there is no other material on record to suggest that, he is a member of Crime Syndicate, headed by Akhtar.

8. Indisputedly, there is no other material, except the statements of co-accused recorded on 27th November, 2018 and retracted confession of Akhtar to indicate

applicant's complicity in five crimes and subject crime. Even otherwise, applicant was arraigned in the crime in question and five previous crimes, only on the information disclosed by the co-accused while in custody, proof of which is prohibited under Section 25 of the Evidence Act.

9. In consideration of the facts of the case and for the reasons stated, in my view, rigors of Clause (b) of Section 23(4) of the MCOC Act, would not be a hindrance in releasing the applicant on bail. Hence, the following order :

O R D E R

(i) The applicant arrested in Crime No. 1121/2018 registered at Tulinj Police Station, Tal. Vasai, Dist: Palghar shall be released on bail on executing P.R. bond for the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer twice a month i.e. on second and fourth Monday of each month commencing from March,

2021 between 11:00 to 1:00 p.m. and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

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

10. The application is accordingly allowed and disposed off.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.