

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

CRIMINAL BAIL APPLICATION NO. 2888 OF 2019

Mahesh Pankaj Soni	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Aabad H. Ponda, Sr. Counsel a/w Mr. Sandeep Karnik for the Applicant

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

PI Mr. Sachin Hire from Kalachowky Police Station, is present

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 20th JANUARY 2021

P.C. :

1 Heard learned counsel for the applicant and the learned A.P.P
for the State.

2 By this application, the applicant seeks his enlargement on bail
in connection with C.R. No. 70 of 2019 registered with the Kalachowky
Police Station, Mumbai, for the alleged offences punishable under Sections
394, 395, 397, 411, 412, 341, 201 r/w 120B of the Indian Penal Code;
under Sections 37(1)(A) r/w 135 of the Maharashtra Police Act; under

Sections 4 and 25 of the Indian Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act (`MCOCA Act`).

3 Learned senior counsel for the applicant submits that the applicant is, in no way, connected with the alleged offence or with the gang leader-Mohammad Ayub Alimuddin Shaikh @ Ayub Chikna (accused No. 1) or his wife-Sangita Nair. He submits that no stolen jewellery was seized from the applicant's jewellery shop and instead, two gold bars weighing 1175 grams were seized. He submits that the allegation as against the applicant and his father, who are running a gold shop under the name `Riddhi Siddhi' is that, they are receivers of stolen property. He submits that mere finding of a melting gold machine in the jeweller's shop, cannot be said to be incriminating by itself, inasmuch as, jewellery shops possess such a machine. He further submits that the prosecution is also relying on certain phone calls made by Ayub Chikna's wife-Sangita Nair to the applicant. He submits that the said phone calls cannot be said to be incriminating, inasmuch as, 4 of the 6 calls were made in February 2019, 1 in March and 1 on 7th April 2019. He submits that the applicant and his father are running a jewellery shop and therefore if phone calls are made to the shop owners by customers, that by itself, cannot be said to be incriminating. He further submits that there is no CCTV footage to show

that any of the accused had come to the applicant's shop to sell the stolen jewellery. He submits that there is one case registered as against the applicant in 2016 with the MIDC Police Station, Mumbai, for the alleged offence punishable under Sections 406 and 420 of the Indian Penal Code. He, however, states that the applicant has not been named in the said FIR. Learned senior counsel submits that the applicant's father who is identically placed, has been released on bail.

4 Learned A.P.P opposes the application. He has filed affidavit of Shirish Sudhakar Sawant, Asstt. Commissioner of Police, Bhoiwada Division, Mumbai, dated 13th December 2019. Learned A.P.P submits that there are CDR records to show that the applicant was in touch with Ayub Chikna's wife-Sangita Nair, who is still absconding. Learned A.P.P does not dispute the fact that there is no statement recorded of any of the accused under Section 18 of the MCOC Act, in the present crime.

5 Perused the papers. According to the prosecution, one-Ashok Sakariya was doing his business of selling jewellery. It is alleged that on 6th April 2019 at about 9:30 p.m, when the complainant was going towards his house, accused Nos. 1 to 5 came near the complainant and assaulted him with an iron chopper, pursuant to which, the complainant was injured.

According to the complainant, the accused persons injured the complainant and also robbed 1800 grams of gold ornaments from his possession and thereafter, fled the spot. It is the prosecution case that the accused No. 1- Ayub Chikna took the stolen gold to the applicant and his father's shop and sold the same. It is further alleged by the prosecution that the absconding accused-Sangita Nair along with her husband-Ayub Chikna had visited the shop for selling the said gold ornaments. After accused Nos. 1 to 5 were arrested, during the course of investigation, the applicant and his father, both were arrested. Admittedly, there is no CCTV footage to show that any of the accused had visited the shop i.e. 'Riddhi Siddhi'. What was seized by the police was a gold melting machine, from the said shop.

6 Mere recovery of gold melting machine, by itself, cannot be said to be incriminating, inasmuch as, the applicant and his father are jewellers and are running a jewellery shop. The CDR records show that the accused No. 1's wife had called the applicant on 6 occasions, on 4 occasions in the month of February, 1 in March and that the last call was made on 7th April 2019. Considering that the applicant is running a jewellery shop, merely because the accused No. 1's wife had called the applicant, the same cannot, by itself, be said to be incriminating. The applicant had, at no point of time, called any of the accused, much less, the

accused No. 1's wife. There is no statement recorded under Section 18 of the MCOC Act of any of the accused, showing complicity of the applicant. Admittedly, the applicant is, in no way, connected with the accused-Ayub Chikna, nor are there any offences registered against the applicant and the said accused. Similarly placed co-accused i.e. applicant's father has been released on bail. The role of the applicant is similar to that of his father.

7 Considering the aforesaid and having regard to the material as discussed above, *prima facie*, there are reasonable grounds to believe that the applicant is not guilty of the offence with which he is charged.

8 The Application is accordingly allowed on the following terms and conditions :

ORDER

- (i) The applicant be released on provisional cash bail in the sum of Rs.1,00,000/-, for a period of six weeks;
- (ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.1,00,000/- with one or two local sureties in the like amount;

- (iii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iv) The applicant shall not leave Mumbai/Thane City, without the prior permission of the trial Court;
- (v) 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;
- (vi) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (vii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (viii) The applicant shall file an undertaking with regard to clauses (ii) to (vii) in the trial Court, within two weeks of his release;

(ix) If there is 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 disposed of in the aforesaid terms.

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 copy of this order, digitally signed by the Senior Private Secretary of this Court.

REVATI MOHITE DERE, J.