

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2910 of 2019

Iqbal Kasam Pathan @ Pappu	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

...

Mr. Santosh Deshpande for the applicant.
Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 28th JUNE 2021

P.C:-

1 The applicant seek his release on bail in connection with C.R.No. 169 of 2016 of NRI Sagari police station being indicted for the offence punishable under Section 395, 397 of IPC read with Section 3, 25 of Arms Act. He is impleaded as accused no.2 and came to be arrested on 25th August 2016.

2 The C.R. in question came to be registered on complaint by the Manager of Popular Finance Co. Ltd having its office in Vashi, Navi Mumbai. The complainant alleged that during the working hours of the Company on 6th August 2016 at around 2.45 p.m, five persons armed with weapons entered in the office, out of them, four had covered their faces with monkey cap

and one person had covered his face with handkerchief. By threatening the office staff, they robbed the Company of 20 kgs of gold and cash worth Rs.9,50,000/-. Pursuant to the robbery, they escaped in one white colour Dezire Car which was waiting on the road. It is alleged that the said car was abandoned at one spot in Navi Mumbai.

3 During the course of investigation, the police recorded the statements of witnesses those who were present in the office and in the precinct of the office. Recoveries were effected from accused persons under Section 27 of the Evidence Act and one Maruti Dezire Vehicle was also traced. For the very same offence, prior approval was sought under Section 23(1)(a) of the MCOC Act on 17th October 2016 and sanction came to be granted by the Commissioner of Police, Thane City for prosecuting the accused persons under the provisions of MCOCA.

4 Charge-sheet came to be filed in the Special Court under the provisions of MCOC Act by showing two persons as 'wanted' accused. It is in the backdrop of this scenario, the applicant being arrested on 25th August 2016, seek his release on bail on the ground that the investigation is complete and there is no material against him in the charge-sheet, which would inculcate him of the offence charged.

Learned counsel for the applicant also place heavy reliance on the release order of another co-accused being Subramaniam Balkrishna Thevar and Ponnuswamy Tangaswamy Nadar by this Court along with release of the co-accused Revati.

5 Opposing the application, the learned APP has relied upon the affidavit filed by the ACP on 29th January 2020 and he submit that amongst the gang leader Arputraj Nadar, there are four cases registered and as far as the present applicant is concerned, list of eleven cases is cited, out of which in 9 cases, the chart reflect that the applicant is acquitted long back before the present offence took place.

Learned APP state that the applicant is one of the member of the crime syndicate and the offence committed is serious, since it is alleged that there was a dacoity where gold worth Rs.6,69,52,000/- was taken robbed. He would also submit that there is recovery of gold ornaments weighing 126.97 gms worth Rs.3,72,270/- from the present applicant which came to be seized under Memorandum Panchnama. The statement of co-accused Muttukumar Nadar recorded under Section 18 of the MCOC Act is relied upon. He also rely upon the Test Identification Parade and submit that the eye witnesses have identified the present applicant and even the recovered gold articles are duly identified by the witnesses. The learned APP relied upon the CCTV footage collected from the Society where

the office is located along with a footage recording that a white Swift Car was moving in Kalamboli, Navi Mumbai. On perusal of the material placed on record, including the statement of the complainant, it can be seen that five persons entered in the office of the complainant but all the persons were masked. In the supplementary statement of the complainant recorded on 6th August 2016, the complainant has given the description of the clothes worn by the five accused persons and attribute specific role to all the assailants who had entered in the office of the Company and committed dacoity by removing gold, cash, hard disc and DVR. The accused no.1 is described as one wearing monkey cap, second accused who had covered his face with black colour cloth, 3rd accused who had covered his face with white handkerchief, 4th accused as wearing cap and 5th accused with his face covered in white handkerchief. The complainant who was present at the spot describe the accused persons by narrating their external appearance and by attributing specific overt act. As far as CCTV footage is concerned, the DVD has been compiled in the charge-sheet by obtaining certificate under Section 65B.

Similarly, the witnesses were called for the Test Identification Parade. However, on perusal of the statements of one witness recorded on 7th August 2016, it can be seen that the five persons who had entered in the office of the Company are described as the ones who had worn monkey caps and one person was sitting in the white Maruti Swift car. The supplementary

statement of one of the witnesses who is alleged to have been present when the dacoity took place and recorded on 15th December 2016, and who is alleged to have identified the accused persons, which include the present applicant as accused no.2 by touching them, the identification appears to be dubious as witnesses have stated that the accused persons who had entered the office had masked their faces and therefore, the Test Identification Parade *prima facie* creates a doubt.

6 As far as the involvement of the applicant as a member of the Organized Crime Syndicate is concerned, the applicant has no offence in common with the gang leader and the offences registered against the applicant are ranging from the year 2007 to 2011 and he has been acquitted in the said offences, except one registered with Karveer Police Station in the year 2010 and the one registered in Gujarat in the year 2011, the progress of which is not known.

7 The veracity of the test Identification Parade itself being dubious, the presence of the applicant as one among the five who had entered the office becomes doubtful. The staff of the Popular Finance has not identified the applicant. The statement of the auto rickshaw driver relied upon, when carefully perused merely refer to he noticing the persons entering the office of the Company for a fraction of second, but this contradicts the

other statements particularly, the complainant and those present in the office where they have stated that the persons who entered the office had covered their faces. The rickshaw puller says that he had seen the accused persons before they covered their faces and they came out within five minutes. The possibility of the witnesses who had seen these persons for a fraction of second and he identifying them by giving minute details of description of their face, is less believable.

8 As far as the recovery of articles of gold from one Jyoti Tiware by recording a Recovery Panchnama under Section 27 of Evidence Act, where the accused had admitted that he had left the ornaments with Jyoti and from whom the ornaments were recovered and valued, the learned APP was specifically asked whether the ornaments recovered vide the panchnama and whose photographs are reflected in the said panchnama are the same as the one being looted from the office of Popular Finance, the learned APP state that there is no identification to that effect that they form part of the booty which was stolen and for which the offence came to be registered for dacoity.

With a similar allegation, the co-accused Subramaniam Thevar has been released on bail by this Court in BA No. 2994/2018 on 28.8.2019, by recording that on the basis of the material, by holding that it cannot be said that the applicant is guilty of the offence with which he is charged and

particularly when the applicant was not the one amongst the five unknown persons who entered the office of Popular Finance Co. There is no reason why the applicant do not deserve a similar relief, particularly when on completion of investigation, the charge-sheet is already filed and it is nearly five years when the applicant remain incarcerated. The material compiled in the charge-sheet against the applicant do not warrant his further incarceration and he is entitled to be released on bail on the following conditions :-

ORDER

- (i) The applicant be enlarged on bail, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount
- (ii) The applicant shall report to the Investigating Officer of the concerned police station on the first Monday of every month between 10.00 am and 12. noon till the conclusion of the trial
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (iv) 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.

- (v) The applicant shall not leave Mumbai City/Thane City without prior permission of the trial court.
- (vi) The applicant to cooperate with the conduct of the trial and attend the Court on every date, unless exempted.

Application is disposed of accordingly.

SMT. BHARATI DANGRE, J