

Shambhavi
N. Shivgan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3525 OF 2019

Ravindra @ Paplya Ram Kale .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr. Satyavrat Joshi i/by Mr. Shivaji A. Masal, Advocate for the Applicant.

Mr. R.M. Pethe, APP for State/ Respondent.

Mr. Dattatray Laxman Tandale, A.S.I., Mangalvedha Police Station, Solapur.

CORAM : SANDEEP K. SHINDE J.

DATE : 8th MARCH, 2021.

PER COURT :

1. Applicant seeks his enlargement on bail in connection with the Crime No. 139 / 2018 registered with Mangalvedha Police

Station, Solapur, under Sections 395, 308, 353, 115, 189, 504, 506 of the Indian Penal Code, 1860 (IPC for short), under Section 4 r/w 25 of the Arms Act, Sections 9 and 15 of Environment Protection Act, under Sections 3(1)/181, 130/177 of Motor Vehical Act and Sections 3(1) (ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA).

2. Briefly stated prosecution case is that;

Upon receiving a information, that one Ravindra @ Paplya Ram Kale (applicant) and his associates, were illegally excavating sand from the river bed of Bhima, at Village Tandur, Police Constable Sudhakar Lamjane and staff members reached the place, at around 04:30 am., where illegal excavation of the sand was ongoing. Two persons loading the sand in truck trolley, were detained on the spot and the charge of trolley loaded with the

sand was taken over by the raiding party. While taking the trolley away, mob of 10 to 12 persons by exerting force, took back the charge of trolley and fled the spot, by threatening the members of the raiding party. It is alleged that two amongst the mob, one unknown person instigated Sujit to waive the weapon at raiding party and run over the trolley on them. Thus alleged, that the mob had forcibly took away the trolley loaded with the sand and fled the spot. Two persons, who were detained on the spot, when enquired with, disclosed the name of the applicant and other nine persons. These two persons had also disclosed that, the trolley was owned by one Prithviraj Bhosle. The value of sand illegally excavated was around Rs. 2 Lacs. Whereupon Police Constable Suresh Lamjane, lodged the complaint on 23rd April, 2018. whereafter the crime no. 139/2018 (subject crime) was registered against thirteen accused persons.

3. Pending investigation on 1st May, 2018, after seeking prior approval, applicant – accused was prosecuted for committing offence of Organised Crime.

4. The applicant was arrested on 6th August, 2018. The investigation is over and the charge-sheet has been filed.

5. Mr. Joshi, learned Counsel for the Applicant, submits that while granting prior approval on 1st May, 2018, the three offences were considered. However, out of it, *qua* crime no. 84/2018, the charge-sheet was filed on 4th May, 2018 i.e. after granting prior approval. State admits this fact, inasmuch as in the reply, it is stated that charge-sheet in crime no. 84/2018 was filed on 4th May, 2018. As such, as on the date of granting prior approval neither two charge-sheets in respect of the specified, offences,

were filed nor its cognizance was taken and therefore submission of Mr. Joshi, learned Counsel for Applicant requires consideration.

6. It may be stated that in the reply, the prosecution has placed on record crime chart *inter-alia* disclosing nine offences registered against the applicant. Still, while granting approval, only three offences considered and this anomaly has not been clarified. Be that as it may, one of the requirements for applying the MCOCA is that on the date of the offence, submission of charge-sheet and cognizance of offence of specified nature in more than one case within the preceding period of ten year, is a mandatory, which is apparently lacking in this case.

7. In so far as the substantive offence i.e. crime no. 138/2018 registered against the applicant in crime no. 139/2018 is

concerned, it may be stated the only, evidence sought to be pressed by the prosecution is, statement of two co-accused, who were arrested on the spot, while loading excavated sand in the trolley. Beyond this, there is no evidence brought on record by the prosecution, to show applicant's complicity in the subject crime.

8. Though it is prosecution case that while the raiding party was taking away the sand loaded trolley, 10 to 15 persons caused, fear and annoyance and intimidated police party, but to say, Test Identification Parade has not been held. In the circumstances, the prosecution is left with no evidence, other than the statement of co-accused, who have been released on bail by this Court in Criminal Bail Application No. 381/2020 and 2107/2019.

9. Mr. Joshi, learned Counsel for the Applicant has invited my attention to order passed by this Court in Criminal Bail Application No. 949/2019 vide which, the co-accused Sanjay Bhosale has been released on bail. The role attributed to Sanjay Bhosale is not different than the role, attributed to applicant.

10. Therefore, in consideration of the facts and for the reasons stated above, conditions imposed under Section 21(4) of the MCOCA would not deter me, from releasing the applicant on bail. As a result, application is allowed on the following conditions.

ORDER

- (i) The applicant is directed to be released on bail in Crime No. 139 / 2018 registered with Mangalvedha Police Station, Pune on executing P.R. Bond in the sum of Rs.

50,000/- with one or more sureties in the like amount;

(ii) The applicant shall report to the Investigating Officer twice a month i.e. Second and Fourth Monday of each month commencing from March, 2021 between 11:00 am. to 01:00 pm. till the charge is framed;

(iii) The applicant shall furnish his residential address as well as permanent address and contact details to the investigating officer within a week;

(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;

11. Application is allowed and disposed of accordingly.

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

(SANDEEP K. SHINDE J.)