

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3549 OF 2019

Roshan Govind Dayare .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Aniket U. Nikam i/b Mr. Vivek N. Arote for the Applicant.

Mr. Y.Y. Dabake, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 14TH JUNE, 2021.

P.C:-

1. The Applicant seeks his release in an appeal filed in connection with C.R. No.242 of 2015 registered with Pen Police Station invoking Sections 395, 397, 347, 412 read with Section 120-B of the IPC and Section 4(25) of the Arms Act and Section 3(1)(ii), 3(2) and 3(4) of the MCOCA. The provisions of the MCOCA came to be invoked when the Inspector General of Police Konkan Range, Konkan Bhavan, Navi Mumbai granted permission to apply the provisions of the said Act.

2. The allegations as contained in the FIR reflect that on

29/12/2015 the Complainant Gopalkrushna Gupta was travelling in a rickshaw at about 1.15 p.m. after collecting cash amount from Pen Branch of Bank of Maharashtra. He was proceeding towards Varsai Branch for transferring the cash amount and when the rickshaw reached near Labguard Company at about 2.15 p.m., two motorcycles overtook the said rickshaw and there were three persons on the said motorcycles. They got down from the motorcycles and by pointing a country made pistol towards the Complainant, robbed him of cash amount of Rs.25 lakhs. This incident prompted the Complainant to lodge a FIR with the Pen Police Station. In connection with the said crime, the Applicant was arrested on 31/01/2016 and the Investigation was completed after obtaining the necessary sanction to prosecute, 12 accused persons are being prosecuted under the provisions of the MCOCA, the Applicant is being implicated as Accused No.12.

3. Mr. Nikam, learned counsel for the Applicant has invited my attention to the material contained in the charge-sheet and he urges that the charge-sheet do not allege or aver that he was one of the three persons, who had blocked the way of the Complainant and robbed the amount. He submits that, at this stage, even if the entire allegations are accepted to be true, the Applicant is alleged to be following the rickshaw on his motorcycle but did not play any active role in the actual robbery. He is identified in the test identification parade by one Sanjay

Ipte. However, Sanjay Ipte was not present at the spot of the incident where the robbery took place but he has been roped to establish the conspiracy that has been hatched.

4. The requirement to charge the Applicant under Sections 395 and 397 would be his presence at the spot of the robbery on the date of incident and though the material and the charge sheet referred to CDRs to show that the Applicant was in touch with other accused persons, identification of the present Applicant at the instance of Sanjay Ipte is not sufficient to identify him as a participant in the robbery. As far as the CDRs are concerned, merely being in connection with the other accused persons itself may not, at this stage, be considered as incriminatory. Further, recovery of an amount of Rs.25,000/- from the Applicant without establishing any connection that this amount forms part and parcel of the booty, that the Complainant was robbed of, and in absence of any material in the charge-sheet tallying the number of notes, which were removed from him and those which were recovered from the Complainant being part of the said amount, at this stage, the prosecution has not established any connection with the amount robbed and the amount recovered from the Applicant.

5. This is the precise ground, which prompted this court (Justice Sarang Kotwal) to release two co-accused Ganesh Suryakant Patil and Vishwas Narhari Patil on bail, though some

amounts were recovered from them and the CDR was sought to be relied upon to establish their connection with the other accused persons. Recording that the prosecution is not in a position to establish the connection with the amount which is robbed and the amount which is recovered from the Applicant and the CDR showing some connectivity between the accused persons cannot be construed to be incriminating and that merely because the accused was in touch with other members that itself will not conclusively establish that he has taken part in committing the robbery. On the same analogy, the present Applicant also deserves his liberty, by being released on bail pending the trial.

6. Perusal of the material *prima facie* reveal absence of a positive material about the participation of the Applicant in the incident of robbery, as the evidence is vague and do not establish that he was amongst the three persons who robbed the Complainant. His confessional statement has been retracted by him. The effect of the retracted confessional statement would be decided at the final hearing along with other material on which the prosecution places reliance.

7. As far as the Applicant being a member of the gang under the leadership of Ravi Shinde is concerned, the commonality of one offence being C.R. No.69 of 2015 registered at Gurgaon Police Station invoking Sections 394, 452, 504, 506 read with

Section 4 (25) of the Arms Act, learned counsel has submitted that the police has filed a report under Section 169 in respect of the same. Pertinent to note that the very gang leader Ravi Shinde, against whom 20 offences have been registered which included a common offence being C.R. No.69 of 2015 along with the present Applicant, the said accused has been released on bail by the trial court. If the kingpin of the entire conspiracy has been released, I see no reason why the Applicant is incarcerated particularly barring the one incident of crime, which he shared in common with the gang leader, there are no other antecedents to his credit. In such circumstances, subject to the following stipulation, he is entitled to be released on bail.

ORDER

- (a) The Applicant – **Roshan Govind Dayare** shall be released on bail in C.R. No.242 of 2015 registered with Pen Police Station on executing P.R. bond to the extent of Rs.**25,000/-** and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall attend to the concerned police station and mark his attendance on first Monday of every month between 10.00 a.m. and 1.00 p.m. till framing of charge, thereafter the special court will be at liberty to impose appropriate condition about the marking of presence of the Applicant, as it deems fit.

8. The Application is allowed in the aforestated terms.

9. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

(SMT. BHARATI DANGRE, J.)