

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.788 OF 2022

REKHA @ MEERA W/O PAPDYA KALE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.A. Gaikwad, Advocate for the applicant

Mr. R.V. Dasalkar, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th AUGUST, 2022

PRONOUNCED ON : 08th SEPTEMBER, 2022

ORDER :

1 Present application has been filed for bail under Section 439 of the Code of Criminal Procedure, 1973. Applicant has been arrested in connection with Crime No.107/2018 dated 20.09.2018 registered with Kopargaon Taluka Police Station, Dist. Ahmednagar, for the offence punishable under Sections 395, 396, 397, 120-B, 75, 412, 414 of the Indian Penal Code, 1860, under Sections 3/25, 7, 4/25 of the Indian Arms Act, 1959 and under Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999. This is the second bail application. Her earlier

bail application bearing No.310 of 2021 was disposed of as withdrawn by this Court on 22.04.2021.

2 Heard learned Advocate Mr. S.A. Gaikwad for the applicant and learned APP Mr. R.V. Dasalkar for the respondent.

3 It has been contended that the charge sheet is filed and perusal of the charge sheet would show that the evidence that has been collected is that certain ornaments from the dacoity have been seized from her. She has been identified by certain witnesses and even earlier she was convicted in Crime No.72/2003 registered with Nagbhid Police Station, Dist. Chandrapur, for the offence punishable under Sections 396, 397 of the Indian Penal Code. But her conviction was under Section 412 of the Indian Penal Code. It cannot be taken as proximity to arrive at to invoke The Maharashtra Control of Organized Crimes Act against her. Further, some of the co-accused have been released on bail and the appeal challenging the said conviction came to be allowed in Criminal Appeal No.74 of 2007 on 03.12.2013 by the Division Bench of this Court at Nagpur Bench. When she was arrested, she was pregnant and she gave birth to a child on 12.06.2019. She came to be arrested on 24.09.2018. That means, for about four years she is behind the bars. The child is also along with her behind the bars, that is, injustice to the

child and also constitutional rights of the child to have a free life. Applicant is ready to abide by the terms of the bail.

4 Per contra, the learned APP strongly opposed the application and submitted that the acquittal of the applicant may be a ground for her but the fact remains that as regards the present case is concerned, there is evidence against her in the form of seizure of ornaments, which are from the present dacoity. The identification is that of the ornaments. The charge sheet was already filed when this Court had considered the earlier bail application. The charge sheet was before this Court on 22.04.2021 and thereafter, after the disinclination is shown to grant any relief to the applicant, the learned Advocate for the applicant had withdrawn the said application. Now, there is no change in the circumstance. Only one co-accused Kishor @ Kranti Kantilal Bhosale came to be released on bail on 26.04.2021. However, it was found that no recovery of weapon was from the said applicant. The evidence against him was that he had sold 20 grams of stolen gold ornaments to a Goldsmith and, therefore, the learned Special Judge held that at the most offence under Section 412 and 414 of the Indian Penal Code would be attracted against him. The husband of the applicant is the leader of the crime syndicate and he had discovered the country made pistol and live cartridge. In fact, there are 19 accused persons, who have taken part in the

commission of the crime and it is their syndicate i.e. operating in the said area and, therefore, she does not deserve to be released on bail.

5 At the outset, it will have to be considered that at the time when this Court had shown disinclination to grant any relief to the applicant and then the learned Advocate for the applicant had withdrawn that application, the entire charge sheet was before this Court. There is no change in the circumstance except the release of co-accused Kishor @ Kranti Kantilal Bhosale and Mahendra Babusha Pawar. The role attributed to co-accused Kishor appears to be different. Co-accused Mahendra came to be released on 05.10.2021. As aforesaid, Kishor Bhosale appears to be the person, who had sold 20 grams of gold and the learned Special Judge appears to be of the view that provisions of MCOC Act are not applicable to him. As regards accused Mahendra Babusha Pawar is concerned, his role is taken as similar to that of Kishor Bhosale and, therefore, he was also released on bail. Some of the co-accused were already released since 2019 but role of each of the accused is required to be considered separately. As regards the present applicant is concerned, it is stated that from her search, certain ornaments which were from dacoity, came to be seized and those ornaments have been identified by witnesses.

6 We are also required to consider the progress in the matter. In view of the fact that now almost four years have elapsed and it appears that the recording of the evidence has not proceeded and the child of the applicant has also grown up, that is also a point that is required to be considered. The change in the circumstance in this case is the release of two co-accused persons. Accused Kranti is in fact, the person who had even sold the gold which was from the dacoity. That means, firstly he possessed the same and then he sold it. His act or role can be said to be more than that of the present applicant. She appears to be the wife of accused Papdya @ Sanjay, whose role appears to be grave and even in CCTV footage certain evidence has been found against him. There is no such evidence which would show that the applicant was present physically at that place. Her acquittal by the Division Bench by Nagpur Bench will have to be then additionally considered. When two more co-accused came to be released on bail by Special Judge, then, definitely, taking into consideration this change in circumstance as well as the fact that the child of the applicant has grown up, he has his own rights to live in a free world, prompts this Court in allowing the application, however, with stringent conditions.

ORDER

1 Application stands allowed.

2 Applicant viz. **Rekha @ Meera w/o Papdya Kale**, who has been arrested in connection with Crime No.107/2018 dated 20.09.2018 registered with Kopargaon Taluka Police Station, Dist. Ahmednagar, for the offence punishable under Sections 395, 396, 397, 120-B, 75, 412, 414 of the Indian Penal Code, 1860, under Sections 3/25, 4/25, 7/25 of the Indian Arms Act, 1959 and under Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner and shall cooperate with the investigation.

4 The applicant shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)