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

BAIL APPLICATION NO. 1802 OF 2021

Chagya @ Bapya @ Chagan Gangaram Shinde ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr.Mohamad S. Mulla for the Applicant.

Mr. A.A.Palkar, APP for the Respondent -State.

.....

CORAM : V.G.BISHT, J.

RESERVED ON : 20TH DECEMBER, 2021

PRONOUNCED ON : 3RD FEBRUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 52 of 2018 registered with Mangalwedha Police Station, Solapur for the offence punishable under Sections 396, 397 120(B) of the Indian Penal Code (the IPC) and Sections 3 (1) (i), 3 (1) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, "the MCOCA Act").

2. It is the case of prosecution that on 8th February, 2018, after the dinner informant made his mother to sleep in the house of his cousin uncle and latched the door from the out side. On the next

day, in the morning at about 6.00 a.m., when informant went to see his mother, he found the door opened and his mother had sustained various bleeding injuries on her person. Her half of the mangalsutra was entangled in her hand and two gold beads were lying on the cot. Accordingly, he lodged the First Information Report (FIR) against unknown thief of having robbed of her mother's half of the mangalsutra worth Rs. 15,000/- and also causing her death.

3. Mr. Mulla, learned Counsel for the applicant, submits that the incident took place in the night hours and none had seen the applicant committing robbery. Rather, the FIR came to be lodged against unknown person. The applicant is in jail since last three years. Investigation is over. Charge-sheet has been filed. In such circumstances, no purpose would be served by keeping the applicant behind the bars and hence, the applicant may be released on bail, argued learned APP.

4. Mr. Palkar, learned APP, on the other hand, opposed the submissions by contending that the applicant is a gang leader. Not only he was identified in test identification parade but recovery has also been made at his instance. There being ample evidence

against him and having regard to the nature and gravity of offence, the applicant may not be enlarged on bail.

5. Perused investigation papers. I have also gone through the affidavit of Sub Divisional Police Officer, Mangalwedha Sub Division, Solapur Rural, Solapur.

6. Admittedly, the FIR was lodged against unknown person. However, there is recovery of gold ornaments worth Rs. 4000/- at the instance of applicant pursuant to disclosure statements given by him under Section 27 of the Evidence Act. Apart from this incriminating evidence, there is corroborative evidence in the form of test identification parade in which the applicant was duly identified by one Smt. Sunita Shivanand Revankar, a goldsmith. It may be noted that her statement is also recorded by the investigating officer.

7. I have gone through her statement. It appears from her statement that on 12th February, 2018, the applicant along with co-accused had been to the shop of this witness to sell 28 beads (of mangalsutra) on the pretext that the wife of one of them is not keeping well and is required to be taken to the hospital and as they

had no monies, they wanted to sell those 28 beads. That person, who was none other than the applicant, is duly identified in test identification parade by this witness.

8. Apart from above, paragraph No. 18 of the affidavit of Sub Divisional Police Officer, Mangalwedha shows that the applicant is a gang leader having number of crime numbers pending in the Court of law. That also goes to show that the applicant, apart from being a gang leader, is a habitual offender.

9. Moreover, there are confessional statements of co-accused, namely, Vaijinath @ Kishor Rama Bhosale and present applicant under Section 18 of the MCOCA Act. I may point out here that the above named co-accused is also duly identified in test identification parade by Smt. Sunita Shivanand Revankar, inasmuch as, according to this witness, co-accused had accompanied applicant to her shop for selling gold beads.

10. It is also worth mentioning here that these confessional statements are not retracted till date by applicant and the said co-accused.

11. In view of above, there being sufficient evidence against the applicant, I do not find merit in the application. Hence, the following order:

ORDER

Bail Application is rejected.

(V.G.BISHT, J.)