

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1098 OF 2021

LAHU VASANT KALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Prathamesh Bhargude, Advocate for the Applicant.

Smt.M.M.Deshmukh, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 14th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.205 of 2017 registered with Police Station Daund, Pune, for offences punishable under Sections 395, 397 of the Indian Penal Code (IPC) and Section 3(1)(ii), 3(iv) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

AVK

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2 It is the case of prosecution that on 17th April 2017, at about 1.30 a.m., while the informant and family members were asleep, five unknown persons entered into their house by breaking the inside latch with the help of a crowbar and after thrashing them removed gold ornaments and cash amount worth Rs.60,000/-. In a similar mode, they committed dacoity in the house of Namdev Yashwant Jathar from the locality. The informant, accordingly, lodge the First Information Report (FIR).

3 Mr.Prathamesh Bhargude, learned counsel for the applicant, submits that bare reading of the FIR would show that no deadly weapon was allegedly used by those unknown persons. There is recovery of motorcycle at the instance of applicant. The learned counsel then assailed the sanction order granted by the Sanctioning Authority and submitted that the same has been accorded without application of mind. Even the antecedents are not sufficient to attract the provisions of MCOC Act against the applicant. Investigation is over and charge-sheet has been filed.

Thus, for all these reasons, the applicant deserves to be enlarged on bail, argued learned counsel.

4 Smt.M.M.Deshmukh, learned APP, on the other hand, opposed the submissions and submitted that the applicant was the main assailant who has been duly identified in the Test Identification Parade. The learned APP also invited my attention to the Affidavit-in-Reply filed by the Deputy Superintendent of Police, Daund Division, District Pune (Rural). According to the learned APP, there are criminal antecedents as well against the applicant and thus, having regard to the seriousness of the offence, the applicant does not deserve to be released on bail.

5 Perused the investigation papers. From the FIR it is very much clear that five unknown persons had allegedly entered into the house of the informant and allegedly committed dacoity in respect of ornaments and cash amount worth Rs.60,000/-. It is also pertinent to note that the FIR nowhere shows that those persons were armed with deadly weapons and while committing

dacoity they caused or attempted to cause grievous hurt to any of the family members. This is one aspect of the matter.

6 It is clear from the record that in Test Identification Parade the present applicant was duly identified by the informant and there is also recovery of motorcycle at his instance under Section 27 of the Indian Evidence Act. The record also shows that there is due recovery of ornaments as well but at the instance of other accused persons.

7 As far as the application of provisions of MCOC Act as against the applicant is concerned, I may point out that in **Mahipal Singh vs. Central Bureau of Investigation and Another¹**, **Dinesh Bhondulal Baisware vs. State of Maharashtra²** and **Prasad Shrikant Purohit vs. State of Maharashtra and Another³** the Hon'ble Apex Court held that in order to constitute an offence of organised crime, it has to be established that the accused is

1 (2014) 11 Supreme Court Cases 282

2 2016(4) Bom.C.R. (Cri) 149

3 (2015) 7 Supreme Court Cases 440

involved in “continuing unlawful activity” defined in Section 2(1)(d) of MCOC Act i.e. more than one charge-sheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before competent Court within preceding period of 10 years and the Court has taken cognizance of such cases. The Hon'ble Apex Court further held that for invocation of offence of organized crime, ingredients constituting that offence must exist on the date the crime is committed or detected.

8 I have gone through the Affidavit-in-Reply filed on record by the prosecution. Paragraph 12 given the details of the crime numbers pending against the applicant. However, it nowhere shows that these crime numbers have resulted into filing of charge-sheets and that the concerned Court has taken cognizance of the same. Thus, on the face of this Affidavit-in-Reply, it cannot be held that the applicant was involved in organized crime within the meaning of Section 2(e) of the MCOC Act. Merely because the applicant has been identified in the Test Identification Parade it does not mean that he is a part of

organized crime syndicate and is actively involved in commission of organized crime. Thus, prima facie, the ingredients of Section 2(1)(d) of the MCOC Act are missing. As a necessary corollary, the prosecution has not been able to prima facie establish that the case of the applicant falls within the scope of Section 21(4) of the MCOC Act.

9 For the aforesaid reasons, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Lahu Vasant Kale shall be released on bail in Crime No.205 of 2017 registered with Police Station Daund, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.

- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)