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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2691 OF 2021

Sachin Pandharinath Kanse

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Trupti Shetty for the Applicant.

Mrs. P.P.Shinde, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 22nd MARCH, 2022

P.C. :

1. Heard learned Counsel for the parties.
2. By this second bail application, the applicant seeks his enlargement on bail in connection with C.R.No. 337 of 2015 registered with the Vile Parle Police Station, Mumbai, for the alleged offences punishable under Sections 395, 363, 341, 412, 468, 201, 170 of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act ('MCOC Act' for short).

3. Learned Counsel for the applicant submits that the applicant's first bail application was rejected on merits by this Court vide order dated 2nd April, 2018. She submits that the change of circumstances compelling the filing of second bail application, is grant of bail by this Court to similarly placed co-accused-Naseem Batullah Khan, vide order dated 18th February, 2021 and that the applicant is languishing in custody since 24th October, 2015 and has undergone more than 50 % of the sentence that is likely to be imposed, if the applicant is found guilty of the offence under the MCOC Act. She submits that the prosecution intends to examine more than 50 witnesses and till date, only one witness has been examined. Learned Counsel further submits that the applicant's role is similar to that of co-accused - Naseem Batullah Khan and as such, seeks bail on the ground of parity. She submits that the applicant has no antecedents. Learned Counsel for the applicant has also tendered an affidavit-cum-undertaking of the applicant. The same is taken on record.

4. Learned APP does not dispute the fact, that, similarly placed co-accused - Naseem Batullah Khan has been enlarged on bail by this Court vide order dated 18th February, 2021. She submits that the applicant had used his car in commission of the offence; has been identified in the Test Identification Parade which was held; and, there is recovery of gold

pieces worth Rs.50,00,000/- at his instance.

5. Perused the papers. The applicant's first bail application was rejected on 2nd April, 2018. The said order is on page 77 of the application. According to the complainant – Mahendrakumar Saini, he was working with M/s. Jai Mata Di Air Services at the Kalbadevi Office, Mumbai. It appears that the said company also had its branch offices at Chennai and Hyderabad. The complainant has further alleged that the customer's would send gold ornaments, gold bars and diamond jewellery through their company and that they would deliver the same to the respective parties at Mumbai. He has further alleged that their office would send the jewellery by Jet Airways and that their office in Mumbai would deliver the said ornaments to the customers of the said dealers in Mumbai.

6. According to the complainant, on 20th October, 2015, at about 11.00 p.m., Mr. Narendrakumar Saini, head of M/s Jai Mata Di Company informed him on phone, that on 21st October, 2015 at about 9.00 a.m., jewellery parcels would be coming to Mumbai by Jet Airways. The complainant has further stated that one Satishkumar Saini contacted him on phone on 20th October, 2015 at about 11.15 p.m. and informed him that one parcel would be sent in Mumbai; that pursuant thereto, he (complainant) alongwith one Pawankumar Saini reached the airport on 21st October, 2015

at about 10.30 a.m. on a two wheeler, collected the two boxes containing jewellery etc. from the Jet cargo office, sent from the Chennai and Hyderabad offices; that after receiving the said boxes, they proceeded towards his residence at Vile Parle (East), Mumbai for sorting out the said jewellery. It is alleged that when their scooter reached the chowk, in front of Kurla Garage, four unknown persons came there, accosted him and informed that they were from the Dahisar Crime Branch office; that the said four persons forcibly took the complainant in their white car and one of them took charge of the two wheeler. Thereafter, the car was taken towards the western express highway, where he was forced to alight from the car. Pursuant thereto, Mahendrakumar Saini lodged an FIR with the Vile Parle Police Station alleging the aforesaid offences. In the supplementary statement recorded on 27th October, 2015, the complainant alleged that there were five persons, who took the ornaments and that one of them took his scooter and the other four persons forcibly made him sit in the car and that from the said four persons, one person had a revolver and was threatening to kill him pursuant to which, the provisions of Arms Act, came to be added.

7. During the course of investigation, the applicant was arrested on 25th October, 2015. After investigation, chargesheet was filed as against

the applicant and other co-accused. According to the prosecution, the applicants car was used in the commission of the offence; that there was recovery of certain gold pieces at his instance and that the applicant was also identified in the Test Identification Parade.

8. It appears that the gold which was seized from all the accused was more than what was allegedly stolen. The applicant is in custody since October, 2015, for about more than 6 ½ years and till date, only one witness has been examined. It appears that the prosecution intends to examine about 100 witnesses in the said case. The possibility of the trial concluding soon appears to be bleak. The minimum sentence under the MCOC Act, if convicted is ten years. The applicant is in custody for more than 6 ½ years. Admittedly, the applicant has no antecedents. The role of the applicant is similar to that of co-accused - Naseem Batullah Khan, who was released on bail by this Court vide order dated 18th February, 2022 on the ground that he has undergone more than half of the sentence. The same is not disputed by the learned APP. The applicant has today filed an affidavit-cum-undertaking of the applicant duly affirmed by the Superintendent of Arthur Road Central Jail. In the said affidavit, the applicant has undertaken (i) to stay at the address mentioned in the affidavit i.e. Room No.3/4, near Kaushalya Hospital, Behind Nitin Company,

Shirodakar Chawl, Santosh Wadi, Thane (W) – 400 604, till the conclusion of the trial; (ii) not to leave the jurisdiction of the Mumbai and Thane without seeking permission from the trial Court; and (iii) to attend the trial Court on every date of trial.

9. Considering the aforesaid, and the fact that the trial is likely to take some time and the fact, that the applicant has undergone 6 ½ years, in custody and that similarly placed co-accused - Naseem Batullah Khan has been enlarged on bail, on the ground that he had undergone more than half of the sentence, the application is allowed and the applicant is enlarged on bail on the following terms and conditions;

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousands Only) with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first and third Saturday of every month between 10.00 a.m. to 12.00 noon, from the date of his release, till the conclusion of the trial.
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being

released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall not leave Mumbai and Thane without the permission of the trial Court.

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

10. The application is allowed in the aforesaid terms and is accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.