

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3396 OF 2021**

Nadeem Abdul Sattar Lakdawala .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Sayaji D. Nangre for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

API Popat Nale, AEC, Crime Branch, Thane, present.

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CORAM: BHARATI DANGRE, J.

DATED : 12th SEPTEMBER, 2022

P.C:-

1. The applicant is charge-sheeted as accused No.3 in C.R.No.287 of 2019, registered with Bazar Peth Police Station on 06/04/2019 alongwith other accused persons for the offences punishable under Sections 385, 387 read with Section 34 of the Indian Penal Code. He came to be arrested on 16/02/2021 and seek his release on bail on the ground that the material compiled in the charge-sheet is not admissible in evidence.

2. Learned counsel for the applicant has placed on record the copy of the charge-sheet and on it's perusal, it can be seen that as far as the present applicant is concerned, he is indicted on the basis of the two circumstances. The first circumstance being, the confessional statement made by co-accused Ejaj Lakkadwala in an MCOCA case and the second circumstance being, discovery statement of co-accused Salim, where he has stated that Abbas was going to meet Salim as well as the present applicant at a particular spot.

3. While dealing with these two circumstances, the learned Additional Sessions Judge, Kalyan relied upon the authoritative pronouncements of the Hon'ble Supreme Court to record that confessional statement recorded in other crime cannot be made admissible, but the learned Judge has drawn an inference that the present applicant is not a co-accused nor there is joint trial between Ejaj Lakkadwala and the present applicant and, therefore, the said statement is admissible. Apart from this, other material which convinced the learned Judge to reject the application is, the statement which led to the discovery by the co-accused. The aforesaid reason is not sustainable. As far as MCOCA case, only the statement under Section 18 is made admissible against the co-accused, but the

said statement is not sufficient to connect the present applicant and the parameters of making the statement under Section 27 of Indian Evidence Act being admissible settled, *prima facie*, there is no material indict him for the offences punishable under Sections 385 and 387 of IPC.

4. Learned A.P.P. states that the applicant has two antecedents and he is arraigned as an accused as a member of the crime syndicate. Even if it is so, he may take the consequences of the same, but the present case is only limited for the offences punishable under Sections 385 and 387 of IPC. His further incarceration is not necessary, though at the time of trial, prosecution may establish it's case against him.

5. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations, in any manner.

: ORDER :

(a) Application is allowed.

(b) Applicant - Nadeem Abdul Sattar Lakdawala
shall be released on bail in connection with C.R.No.I-287

of 2019 registered with Bazar Peth Police Station, Kalyan on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of every month between 3.00 p.m. to 5.00 p.m. till framing of charge.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(SMT. BHARATI DANGRE, J.)