

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3970 OF 2021

Sandeep @ Maya Jayprakash Patel] .. Applicant

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.3967 OF 2021

Sandeep @ Maya Jayprakash Patel] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Nikhil Mallelwar i/b Sachin Pawar, for the Applicant.

Mr.S.H.Yadav,APP for the State.

API Dilip Vede, Narpoli Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 4th OCTOBER, 2022.

P.C.

1] The Applicant is charged for the offence of lurking house-trespass and house breaking in the night and therefore Sections 454, 457 alongwith 380 of the Indian Penal Code are invoked.

He came to be arrested on 22.11.2017 in the said CR, which was registered in the year 2015.

2] With the able assistance of the learned counsel for the Applicant and the learned APP, I have perused the charge-sheet.

The subject CR is registered on a complaint filed by one Kishor Dubey who stated that some boxes of mobile phones stored in the godown were removed by breaking open the ventilator and estimated loss was stated to be of Rs.81,483/-. The complaint was lodged against unknown persons.

In the supplementary statement, the complainant enhanced the amount to Rs.40,31,728/-.

The crime was registered on the basis of said complaint in the year 2015 and one of the accused person was arrested and as noted above, the Applicant was arrested on 22.11.2017.

3] The learned APP was asked to point out material in the charge-sheet about the Applicant being a participant in the subject CR. He would invite my attention to Memorandum Panchanama dated 29.01.2016 at the instance of one Shekhar Dayaram Sunka which refer participation of the present Applicant in the crime and he allege that the Applicant is leader of the team and he had given details of various burglaries committed by the accused persons and the details of the persons to whom the goods were sold.

On 30.01.2016 a seizure Panchanana is drawn where these articles are found to have been recovered against distinct persons.

4] Surprisingly, this is the only material which is included in the charge-sheet against the present Applicant. However, it is a settled position of law that as far as discovery panchanama is concerned, it is only when any fact is deposed to as discovered in consequence of the information received from a person accused of any offence, in the custody of Police Officer, so much of such information, as relates distinctly to the fact thereby discovered, is to be proved.

5] In any case, the contents of the Memorandum Panchanama which implicate the present Applicant as one of the accused cannot be a prima-facie ground for his conviction under Section 454 and 457 of the Indian Penal Code, in absence of any material establishing that he was a party to the act of lurking house-trespass from where the goods were stolen.

6] It is also submitted that till date the charge is not framed and the co-accused, who alleged to have committed trespass, are already released on bail.

In the wake of above, the Applicant cannot be kept incarcerated when even till date charge is not framed and trial has not commenced. Hence, the Applicant deserve his release on bail.

7] Though the learned APP submit that the Applicant has several antecedents showing his involvement in similar offences, considering the role attributed to the Applicant and charges levelled against him in the present case, I do not think that merely because he has antecedents, he deserve further incarceration.

8] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

In the wake of above, following order is passed :

ORDER

- (a) Application is allowed.
- (b) Applicant – Sandeep @ Maya Jayprakash Patel shall be released on bail in connection with C.R.No.472/2015 in BA

No.3970/2021 and CR No.417/2015 in BA No.3967/2021, both registered at Narpoli Police Station, Thane, on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

The Applicant shall be released on cash bail of Rs.25,000/- for a period of four weeks in lieu of sureties. During the said period the applicant shall arrange for the sureties.

(c) The applicant shall report to the concerned Police Station as and when called for.

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

(e) The Applicant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]