

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.73 OF 2022

Lalit @ Laddu Yadav

Versus

State of Maharashtra, through P.S.O., P.S. New Kamptee, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P. Sathianathan, Advocate for the applicant.

Shri T.A. Mirza, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 16/06/2022

1. The applicant is seeking bail in Crime No.308 of 2018, dated 19.10.2018, registered with Police Station Kamptee, District: Nagpur (Rural), for the offences punishable under Sections 392, 341, 506 and 504 read with Section 34 of the Indian Penal Code.

2. Shri Sathianathan, learned counsel for the applicant is praying for grant of bail on the ground of parity. It is submitted that this Court vide order dated 25.10.2021 passed in Criminal Application (BA) No.948 of 2020 and order dated 15.11.2021 passed in Criminal Application (BA) No.476 of 2021 granted bail to the two co-accused persons who are accused Nos.2 and 5.

3. It is submitted that after considering the material available on record, both the accused persons have been released on bail.

4. It is further submitted that the application of the present applicant was rejected prior to above referred orders and therefore, grant of bail to the two co-accused persons is change in circumstances to maintain this application.

5. On the other hand, Shri Mirza, learned APP strongly opposes the present application and submits that there are two confessional statements wherein the name of the applicant is disclosed and specific role attributed against the applicant in the alleged offence.

6. He further submits that the provisions of MCOC Act have been applied to the case of the applicant and therefore, unless this Court records that there is reasonable ground to believe that the applicant is not guilty or he will not abscond, this Court can not grant bail. He therefore, submits that in this case, as there is incriminating material available, it can not be said that there is a reasonable ground to believe that the applicant is not guilty. Accordingly, he prays for rejection of present application.

7. I have perused the charge-sheet filed after completion of the investigation, the confessional statements and the orders passed by this Court granting bail to the two co-accused No.2 and 5.

8. This Court in the case of accused No.2 while granting bail has observed thus:

“3. The learned counsel Mr. Nayak Submits that in the substantive crime in which the provisions of MCOC Act are invoked, there is no material which if translated into evidence shall entail conviction of the accused. This submission is not refuted by the learned APP Mr. Rao.

4. The short submission of Mr. Nayak is that since the applicant is not prima facie involved in the substantive crime, only on the basis of certain charge-sheets filed in the past, the applicant cannot be detained unnecessarily. The provisions of the MCOC Act would not be applicable in the absence of culpability in the substantive crime inasmuch as there would be no continuing unlawful activity as would warrant invoking the stringent provisions of the MCOC Act, is the submission. Certain decisions are pressed in service to buttress the said submission.

5. Considering the irrefutable position on record that in the present crime there is no material on record as can be termed as incriminatory, a satisfaction can be recorded that reasonable grounds exist to believe that the applicant may not be involved in commission of offence under the MCOC Act.

6. For similar reasons, a further satisfaction can be recorded that the applicant is not likely to indulge in offence punishable under the MCOC Act, if released on bail."

9. Similarly, this Court while granting bail to the co-accused No.5/Vanish Dharampal Meshram has observed thus:

"5.The test identification parade was conducted on 17.01.2019 i.e. after nearly three months and while the complainant allegedly identified the applicant, there is no subsequent statement recorded which explains or elaborates the role of the applicant in the incident. Considering the contents of the FIR which alleges that two persons who were riding Activa vehicle assaulted the complainant and robbed him of cash and mobile phones, it was imperative for the Investigating Agency to record the supplementary statement of the complainant after the test identification parade in as much as even according to the Investigating Agency the complainant identified as many as four accused.

6. While the learned APP Mr. Pathan is seriously opposing the bail on the premise that the stringent provisions of Section 21(4) of the MCOC Act would be a fetter, I am inclined to grant bail in as much as in the substantive offence there does not appear to be credible material on record to link the applicant with the crime. This is only a prima facie observation made for the purpose of considering the entitlement to bail.

7. Considering the nature of the material on record, I am inclined to record a satisfaction

that reasonable grounds exist to believe that the applicant may not be involved in commission of offence punishable under the MCOC Act. A further satisfaction can be recorded that the applicant is not likely to indulge in offence punishable under the MCOC Act, if released on bail.”

10. In the light of the above referred observation made by this Court while granting bail to the co-accused persons, I have perused the confessional statements. The two co-accused persons who were holding knife, at the time of commission of offence, they have been released on bail and thus, if the role of present applicant is considered with the role of the co-accused persons who have been granted bail, it can not be said that the role of the present applicant is different.

11. In the circumstances, I have no hesitation to hold that the applicant is entitled for parity.

12. Thus, on the basis of material available against the applicant, it can safely say that, in this case, there is reasonable ground to believe that the applicant is not guilty or he will not abscond.

13. As far as, the antecedents are concerned, stringent conditions will have to be imposed for bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No. 308 of 2018, dated 19.10.2018, registered with Police Station Kamptee, District: Nagpur (Rural), for the offences punishable under Sections 392, 341, 506 and 504 read with Section 34 of the Indian Penal Code on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station as and when his presence is required.
- d) The applicant shall not tamper with the prosecution witnesses.
- e) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]