

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

Criminal Application (BA) No. 1123 of 2022

Pravin S/o Parasram Kanole

Versus

State of Maharashtra, through Police Station Officer,
Police Station Gittikhadan, Dist. Nagpur

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

Court's or Judge's Order

Shri D.V.Chauhan, Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 26th SEPTEMBER, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 881 of 2021 registered with Police Station Gittikhadan, Dist. Nagpur for the offence punishable under Sections 395, 412, 120(b) of Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999.

2. Shri Chauhan, learned counsel for the applicant has drawn attention of this Court to the findings recorded by the learned trial Court while rejecting the application wherein it has been observed

that “no doubt, the applicant is not having direct role in commission of the offence, but he after the incident assisted the co-accused who have committed dacoity”. Thus, the applicant is facilitated the commission of the crime. Accordingly, he submits that there is nothing to show that the applicant was involved in the alleged offence.

3. It is submitted that the applicant is a gold smith and the only incriminating material against the applicant is Memorandum of co-accused recorded under Section 27 of Evidence Act. He submits that considering the scope of Section 27 of Evidence Act, using such Memorandum to show the involvement of the applicant on the basis of entire statement recorded by the prosecution, of the co-accused rather than only that part of statement which leads to the discovery of facts is contrary to law. He submits that such kind of statements of accused otherwise hit by principle of Evidence Act. For this purpose, he has placed reliance of the judgment of Hon’ble Supreme Court in the case of Venkatesh @ Chandra and another Vs. State of Karnataka¹.

4. He further submits that applicant is in jail since 24th December, 2021 and after filing of the

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chargesheet further custody of the applicant is not necessary.

5. It is further pointed out that there is nothing to show that the applicant is a member of organized crime syndicate and as far as antecedents are concerned, the applicant was acquitted in Crime No. 198 of 2009, whereas when the applicant was arrested in the present crime, Crime Nos. 872 of 2021 and 547 of 2021 were registered. He further submits that considering the time gap between the first crime and the present crime i.e. about 12 years, it cannot be said that the applicant is a habitual offender. Accordingly, he prays for grant of bail.

6. On the other hand, learned Additional Public Prosecutor strongly opposed the application and submits that as the provisions of MCOC Act are invoked and considering the antecedents, this Court may not grant bail to the applicant.

7. In the backdrop of submissions of both the parties, I have perused the chargesheet and the application.

8. Considering the allegations made in the First Information Report against the applicant and the role attributed to him, *prima facie*, it can be seen that no role is attributed to the applicant relating to

commission of offence. However, after the commission of offence, it is alleged that he facilitated the co-accused. However, this is based on the statement of the co-accused recorded in the memorandum under Section 27 of Indian Evidence Act.

9. The Hon'ble Supreme Court of India in the case of Venkatesh @ Chandra and another Vs. State of Karnataka (supra) has observed thus :

23. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.”

10. Thus, except the memorandum under Section 27 of Evidence Act, there is no incriminating material against the applicant. Therefore, there is a reasonable ground to believe that the applicant is not involved in the alleged offence.

11. Moreover, considering the fact that first crime was committed in the year 2009 in which he has been acquitted and as per the record there are three

similar crimes which were registered in the year 2021 i.e. after the gap of 12 years. Thus, it cannot be said that there is a reasonable ground to believe that there is possibility if the applicant is released on bail, he may repeat the offence. In the circumstances, I pass the following order.

- i) The Criminal Application is allowed.
- ii) It is directed that applicant shall be released on bail in Crime No. 881 of 2021 registered with Police Station Gittikhadan, Dist. Nagpur for the offence punishable under Sections 395, 412, 120(b) of Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organise Crime Act, 1999, on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety in the like amount
- iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.
- iv) The applicant shall not leave the country without permission of the jurisdictional Court.

v) Liberty is granted to the State to apply for cancellation of bail, in case, the applicant repeats the offence or commits any breach of conditions.

[ANIL S. KILOR, J.]

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