

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO. 1106 OF 2022
WITH
INTERIM APPLICATION NO. 3822 OF 2022**

Ashish Anand Bhosale ..Applicant
VS.
The State of Maharashtra ..Respondent

Kamlesh Gujar for the Applicant.

Ms. A. A. Takalkar, APP for the State.

PSI – Narayan Dalvi, Vileparle Police Station

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 2, 2023

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail by the applicant- Ashish Anand Bhosale, in connection with C.R. No.337 of 2015 dated 21/10/2015, registered with Vile Parle Police Station, under sections 395, 363, 341, 412, 468, 201, 170 of the Indian Penal Code, 1860, sections 3 and 25 of the Arms Act, 1959 and sections 3(1)(ii), 3(2), 3(4) of the Maharashtra

Control of Organised Crime Act, 1999.

3. The applicant sought bail mainly on the ground of long incarceration. My attention is invited to the order dated 22/03/2022 passed by this Court in Bail Application no. 2691 of 2021. Paragraph nos. 4 to 8 of the said order reads thus:

“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."

4. On the ground of parity the application deserves to be allowed. From the present applicant, gold worth Rs.53 lakhs was recovered at his instance. The applicant is in custody for 7 years and 3 months. There are more than 100 witnesses. So far only 1 witness has been examined. On the ground of long incarceration and as the trial is likely to take a long time to conclude, the present applicant can be enlarged on bail. Hence, the following order.

ORDER

(i) Applicant- Ashish Anand Bhosale in connection with C.R. No.337 of 2015, registered with Vile Parle Police Station, shall be released on bail, on his

furnishing P.R. Bond of Rs.25,000/- 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.

5. The application is disposed of.

(M. S. KARNIK, J.)