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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1512 OF 2022**

Kalpesh Manohar Thanekar	...Applicant
vs.	
State of Maharashtra	...Respondent

Ms. Pooja Phagnekar for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.
Mr. B. D. Pawar, PSI, Kalyan Taluka police station present.

CORAM : S. M. MODAK, J.

DATED : 7TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The Officer is present. There are two submissions made on behalf of the Applicant. One is that the provisions of MCOC Act are unwarranted and for showing the involvement there is single offence registered under sections 395 and 397 of IPC. There are no convincing materials.
3. Whereas according to learned APP, there need not be the charge-sheet against every accused person, if there are charge-sheets

in respect of unlawful activity, that is sufficient. According to him there are sufficient materials which shows involvement of the Applicant in the dacoity incident. To buttress his submission he relied upon the following circumstances :

- (a) The motor-cycle belonging to the Applicant was used in the commission of crime and it is seized at his instance.
- (b) He is seen on motor-cycle, outside the shop at the time of incident in CCTV cameras and it is seized.
- (c) He assisted the main accused persons in running away from the spot and even he has purchased T-Shirts from village Ambivali to be used by the main accused persons and he has paid amount through google pay.

4. The list of charge-sheets filed against gang leader-Kunal Nanu Rawate is at page 282 to 286. He is yet to be arrested. In none of the charge-sheets, the present Applicant is co-accused. The list of offences against present Applicant is at page 287, being Crime No.511 of 2021, which is present offence. Except this offence, the Applicant is not having the criminal antecedents.

5. When the provisions of MCOC Act are invoked, there is embargo on the Court to grant bail under section 21 of the said Act. When the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence once released on bail, then can only the Court can grant him bail. The circumstances mentioned above persuades me to grant him bail. It is for the reason that filing of the charge-sheet is one of the circumstance to show involvement of any accused in unlawful criminal activity. There can be other materials also. In this case, none of them are absent against present Applicant. Considering the fact that this is only offence registered against him, the other condition of section 21 would not come into play

6. The prosecution has relied upon the materials as mentioned above. Certain robbers have entered the shop of Yamuna Jewellers at Titwalla on 25th September 2021 at about 12.50 hours. They have entered the shop pretending to be customers. Then they have threatened the employees to part away with the ornaments. In such a way the offence of robbery is committed.

7. The Kalyan Taluka police station has registered offence under sections 392, 395, 397, 506 read with 34 of IPC. During

investigation, the present Applicant came to be arrested as one of the suspect. At his instance the motor-cycle used in the crime is seized. The pendrive from CCTV footage is produced by the witness Arupkumar Dhara, who is the first informant. It is at page 199. The photographs from that footage are at pages 55 to 60.

8. As per prosecution, the Applicant was standing outside the shop on motor-cycle. The said photograph is at page 60. Learned APP invited my attention to the memorandum statement of the present Applicant, on pages 61 and 62, therein. He has narrated the story how they ran away after committing robbery and where they have gone. The accused may state any fact in the memorandum statement but every fact is not admissible as per the Indian Evidence Act.

9. No statement of shop keepers from Ambivali is pointed out to me. Only extract to show that the Applicant has paid amount with help of the google pay are relied upon. Admittedly, there is no recovery of robbed ornaments at the instance of this Applicant. He is behind bar for the last two years and one does not know when the trial will start. It is contended that the main accused i.e. gang leader and one more accused are yet to be arrested and if he is

released on bail that will help them to evade arrest further. There are other means available to police to arrest them.

10. Considering the above circumstances, I do not think that his bail can be rejected. Hence, subject to conditions the following order is passed:

ORDER

- (a) The Applicant-Kalpesh Manohar Thanekar be released on bail in connection with C.R. No.511 of 2021, registered with Kalyan Taluka police station for the offences punishable under sections 392, 506 read with 34 of IPC, on furnishing personal bond and surety bond of Rs.50,000/-.
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall give attendance to the Kalyan Taluka police station on every first and third Saturday from 10 am to 12 noon for two years.
- (d) The Applicant is directed not to leave territorial jurisdiction of Thane District until completion of the trial. If he want to leave, he may do so after obtaining the permission of the trial court.

(e) Needless to say, violating of the condition above will make the Applicant liable for cancellation of regular bail, after notice to the Applicant.

11. Application is disposed of accordingly.

12. These are my prima facie observations and the trial Court may not be influenced by that.

13. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]