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

BAIL APPLICATION NO.1604 OF 2023

DIPAK @ SANTOSH SANJAY @ GAPATYA
KALE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Rushikesh Kale i/b. Adv. Sachin Devkar for the
applicant.

Ms. Veera Shinde, APP for the State.

API – S.D. Kunjiv, Karmala Police Station, Solapur Rural.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 1, 2023

P.C. :

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

2. This is an application for bail in respect of the offence
punishable under Sections 394, 395 of the Indian Penal
Code (hereafter 'IPC' for short) and under Sections 3(1)(ii),
3(2), 3(4) of the Maharashtra Control of Organised Crime
Act, 1999 (hereafter 'MCOCA', for short) registered on
29.03.2019 vide C.R. No.232 of 2019 with Karmala Police
Station, District Solapur.

3. Learned counsel for the applicant invited my attention to the order dated 20.10.2023 passed by this Court in Bail Application No.2518 of 2022 in respect of the co-accused – Ajay @ Ajya Rajya Bhosale and ors. vs. The State of Maharashtra. For ease of reference the order is reproduced which will cover the facts of the present case also.

"1. By this application, applicants are seeking bail in Crime No.232 of 2019 registered with Karmala Police Station, District Solapur, for offences punishable under Sections 394 and 395 of Indian Penal Code, 1860 and Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short "the MCOCA").

2. It is prosecution's case that on 29th March 2019 at about 4.30 am at about 25 Kms away from Karmala, four persons had thrown stones on the trailer of first informant, hence, first informant stopped the vehicle. One of the accused had assaulted the first informant with the help of stone on his head and also assaulted the cleaner and helper with fist blows and took away cash and other articles worth Rs.35,000/-. FIR was lodged against four unknown persons. In investigation, police arrested applicants in connection with the said crime.

3. It is the contention of learned counsel for applicants that applicants have been falsely implicated in this case. No incriminating material is produced on record to show the involvement of the applicants in the said crime. In test identification parade, applicant No.1 has not been identified by the first informant and first informant and other witnesses were not available for test identification parade of applicant Nos.2 and 3. There is recovery of Rs.5,200/- from applicant No.1. It is not proved that this amount was robbed amount or not. Applicants are behind bar for more than four years and six months, yet charges have not been framed. Hence, requested to allow the application.

4. It is the contention of learned APP that applicants had robbed the amount from first informant. There is recovery of robbed amount from applicant No.1. Applicants are the members of crime syndicate. There is prima facie case against the applicants. Hence, requested to reject the application.

5. I have heard both learned counsel, perused the FIR and charge-sheet.

The allegations against the applicants are that they had robbed the first informant. In test identification parade, applicant No.1 is not identified by the first informant and first informant was not available for test identification parade of applicant Nos.2 and 3. Though there is recovery of amount from applicant No.1 but first informant has not identified applicant No.1 in test identification parade. Applicants are behind bar for more than four years, yet charges have not been framed. It may take time to conclude the trial."

4. Learned APP opposed the application for bail. Learned APP submitted that there are three criminal antecedents reported against the applicant.

5. There are in all eight accused. The applicant is the accused No.6. The applicant was arrested on 28.09.2021. Though the application is opposed by learned APP by inviting my attention to the affidavit-in-reply filed on behalf of the respondent apart from the oral submissions made in support of the prosecution case, I am of the opinion that as the co-accused having a similar role has been enlarged on bail, even the present applicant can be enlarged on bail.

Moreover, having regard to the nature of the accusations in the present case, the antecedents by itself should not be a factor to deprive the applicant the facility of bail. There is no recovery from the applicant but it is the prosecution case that an amount of Rs.2,000/- has been recovered from one of the relative of the applicant. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Dipak @ Santosh Sanjay @ Gapatya Kale in connection with C.R. No.232 of 2019 registered with Karmala Police Station, District Solapur shall be released on bail on his furnishing P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs.30,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Karmala Police Station, District Solapur once in a month every first Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.

(e) The applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

(f) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(g) If any offence is registered against the applicant of similar nature, it would be a ground for cancellation of bail.

6. The application is allowed in the aforesaid terms and is accordingly disposed of.

7. It is made clear that the above observations are made only for the purpose of granting bail and the trial Court shall decide the case on its own merits in accordance with law and uninfluenced by the observations made in this order.

(M. S. KARNIK, J.)