

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.62 OF 2023

Pintya S/o Babbu Mogiya Vs. State of Maharashtra, PSO, PS Gittikhadan, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.G. Hunge, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : FEBRUARY 17, 2023.

This is an application under Section 439 of the Code of Criminal Procedure.

2. The applicant has been arrested on 24.12.2021 in Crime No.881/2021, registered with Police Station, Gittikhadan, District Nagpur for an offence punishable under Sections 395, 412, 120-B of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999.

3. The applicant, who is a labourer, has been booked under the provisions of the Maharashtra Control of Organized Crime Act, 1999 (For short "MCOC Act"). The accusation is that he is a member of Changiram's gang. Changiram is absconding. It is alleged that Changiram gang has committed dacoity in the intervening night of 02.12.2021 and 03.12.2021. The dacoity has been committed in the row house situated in Welcome Society, Dabha, Nagpur. The First

Information Report dated 03.12.2021 lodged by the informant indicates that in the intervening night of 02.12.2021 and 03.12.2021, seven to eight youngsters entered her house and demanded gold and cash. They took away the gold bangles, and gold chain so also gold tops from her person and cash worth ₹10,000/-. The total amount of dacoity is said to be ₹98,000/-.

4. Learned Additional Public Prosecutor has placed reliance upon confessional statement of the applicant. It indicates that on 28.10.2021, the applicant has given a tip to the gang leader Changiram that cash worth ₹40,00,00,000/- (Rs. Forty Crores Only) was lying in the row house situated in Welcome Society. The confessional statement further indicates that the members of the Changiram gang made an attempt to steal that amount but found nothing. The gang leader Changiram abused the applicant on the next day because nothing was found in terms of his tip. Learned Additional Public Prosecutor fairly submits that the name of the applicant is not disclosed in the confessional statement. Thus, the confessional statement is of no help of the prosecution.

5. The only evidence against the applicant is call data record. The learned Additional Public Prosecutor submits that all the accused were in touch with each other prior to and subsequent to the crime.

6. Learned advocate for the applicant has, however, invited my attention to page no.89, which is chart showing calls made by the accused to each other. The name of the applicant is however not shown in the chart.

7. If that be so, it will be challenging for the prosecution to prove the guilt of the applicant in the crime.

8. In the circumstances, without going into the aspect of challenge as to whether the previous two charge-sheets indicate sufficient compliance for invoking provisions of the MCOC Act, considering the nature of evidence relied collected by the prosecution, there are reasonable grounds for believing that the applicant is not guilty of the punishable crime. Thus, the first condition contained in Section 21(4) is satisfied.

9. So far as the second condition is concerned, learned counsel for the applicant submits that there are no criminal antecedents against the applicant in the sense that there were no offences registered against the applicant prior to the commission of the present offence. However, subsequent to commission of present offence, he is shown to have been involved in four similar cases which were reported vide Crime Nos.547/2021, 557/2021, 563/2021 and 872/2021 and with Police Stations Gittikhadan and Beltarodi, Nagpur respectively. The alleged offences are under Sections 394 and

395 of the Indian Penal Code. The learned counsel for the applicant has pointed out that Crime No.547/2021 was allegedly committed on 13.12.2021, Crime No.872/2021 on 29.11.2021, Crime No.557/2021 was allegedly committed on 15.12.2021 and Crime No.563/2021 was allegedly committed on 15.12.2021. It is the case of the applicant that while he was in police custody in the present crime, he was made to confess that he has committed these two crimes. The co-accused in the present case are also shown as accused in the said crimes.

10. On inquiry, learned Additional Public Prosecutor could not point out the statement of any independent witness showing complicity of the applicant in Crime Nos.547/2021, 557/2021, 563/2021 and 872/2021. In that sense, these four crimes cannot be taken aid of to deny the bail to the applicant. Therefore, it could be said that the applicant is not likely to commit any offence while on bail. Thus, the applicant has made out a case for releasing him on bail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

11. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

12. Resultantly, the following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Pintya S/o Babbu Mogiya, be released on bail, in connection with Crime No.881/2021, registered with Police Station, Gittikhadan, District Nagpur for an offence punishable under Sections 395, 412, 120-B of the Indian Penal Code and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on he furnishing P.R. Bond in the sum of ₹25,000/- with one solvent surety in the like amount.
- (iii) The Applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the residence till the final disposal of the case.
- (iv) The applicant shall attend the Court on each and every date of the trial. Further, he shall not seek unnecessary adjournments and cooperate in early disposal of the trial.
- (v) The Applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (vi) The Applicant shall not play mischief with the evidence collected or yet to be collected by the Police.

(vii) The Applicant shall maintain law and order.

(viii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms

JUDGE

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