

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

CRIMINAL APPLICATION (BA) NO.1311/2022

Sachin Munnaji Jagne .vs. State of Maharashtra through its PSO Gittikhadan,
Nagpur, Tq. Dist. Nagpur.

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

Court's or Judge's orders

Mr. G.S. Chandok with Mr. A. Mirza, Advocates for applicant
Mr. I. Damle, A.P.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 5, 2023.

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 Rs.10,000/-. The total amount of dacoity is said to be Rs.98,000/-.

2. 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 Rs.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. This confessional statement has been relied upon by the prosecution to show his complicity with the crime that has occurred on 03.12.2021. This confessional statement, obviously, will not be of any help to the prosecution as it does not indicate any fact relating to the offence in question.

3. Learned Additional Public Prosecutor has then placed reliance upon another confessional statement which is of co-accused – Hari Asole, who appears to be a poor fellow involved in the daily goods carriage business. When he had parked his vehicle as a routine practice on 03.12.2021 awaiting order, the present applicant called him and said that he and 5-6 labourers intend to go to Wadi for labour work and that he wants his services to transport them to the said place and after completion of the work to bring them back. The deal was fixed for Rs.1800/-. The confessor took the applicant and others to Wadi T-Point. The passengers i.e. the applicant and other labourers consumed liquor. Thereafter

the confessor dropped them in Dabha locality. The applicant and confessor came back to Santra market. Then the confessor went back to his home. He left the applicant in Santra market on 03.12.2021. The applicant called him at 05:00 a.m. on next day and informed that the work has been completed and requested to take them back. The confessor and applicant went to a place called Katol Naka. The persons who were said to be the labourers were brought to Mankapur railway crossing. The confessor dropped them and received his remuneration.

4. If his confessional statement is accepted, it would, prima facie, show that the confessor used the vehicle for transporting the persons. It also indicates that the applicant was not even present at the spot as he was brought back immediately and was dropped at Santra Market. Unfortunately, both the applicant and driver of transport vehicle have been booked that too under the stringent provisions of the MCOC Act.

5. Apart from the confessional statement, there appears no other evidence against the applicant. The other confessor namely; Hari Asole has already been released on bail.

6. 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, on the strength of evidence relied upon 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. 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 two similar cases which were reported vide Crime Nos.872/2021 and 547/2021 with Police Stations Gittikhadan and Beltarodi, Nagpur respectively. The alleged offences are under Sections 394 and 395 of the Indian Penal Code. The co-accused in the present case are also shown as accused in the said crimes. The learned counsel for the applicant has pointed out that Crime No.547/2021 was allegedly committed on 13.12.2021 and Crime No.872/2021 on 29.11.2021. 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.

7. On inquiry, learned Additional Public Prosecutor could not point out statement of any independent witness showing complicity of the applicant in Crime Nos.547/2021 and 872/2021. In that sense, these two 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 with certain conditions.

8. The observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Judge, who is seisin of the of the trial, shall not get influenced with the above observations.

9. Resultantly, following order is passed.

ORDER

(i) The application is allowed.

(ii) Applicant-Sachin Munnaji Jagne, 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 PR. Bond in the sum of Rs.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 not leave the territory of Nagpur City without prior permission of the Court, till the trial is over.
- (viii) The Applicant shall maintain law and order.
- (ix) 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.

(Anil L. Pansare, J.)

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