

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 742 OF 2024

Bhavorsingh Udaysing Dassana	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Neeraj Yadav a/w Ms. Sunayana Dhakkad, for the applicant.

Mr. Bairag B. Kulkarni, APP for the respondent – State.

Mr. Ashutosh Chavan, P.S.I. Waliv Police Station, Present.

CORAM : MANISH PITALE, J.
DATED : 16th DECEMBER, 2024

PC:-

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The present application is filed seeking bail in connection with FIR No. 0015 of 2022 dated 4th January 2022, registered at Waliv Police Station, Vasai-Virar, for offences under Sections 395, 397, 212 and 120-B of the Indian Penal Code (IPC), as also under Section 31(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act). The applicant is one of the six accused persons, who have been charge-sheeted in the present case.

3. It is stated at the outset on behalf of the applicant that three co-accused persons i.e. Chetan Manohar Ghaytadke, Zahid

Nissar Ahmed Shaikh and Shankar Singh Jalamsingh Kharvat have been granted bail by this Court.

4. The learned counsel appearing for the applicant referred to the prosecution case, submitting that according to the allegations which led to the registration of the FIR, the victim was waylaid and cash was taken away from him on a highway leading to registration of offence under Section 395 of the IPC. The FIR was registered against unknown persons and thereafter, the applicant along with the other co-accused persons were arrested on 9th January 2022, the FIR having been registered on 4th January 2022 in respect of the alleged incident dated 3rd January 2022.

5. The learned counsel for the applicant submitted that in the present case, even as per the role attributed by the prosecution to the applicant, a case is made out for being released on bail. It is submitted that the similarly situated co-accused person i.e. Shankar Singh Jalamsingh Kharvat was granted bail by order dated 12.06.2024 passed by this Court in Bail Application No.502 of 2024.

6. It is submitted that the FIR was registered against unknown persons and according to the Investigating Authority, pursuant to investigation, the role of the applicant came to light. The role attributed to the applicant is essentially based on statements made by the co-accused persons, who can be said to be the main accused. It is submitted that as per the prosecution and in terms of the statements of the co-accused persons, the applicant's role was limited to providing accomodation to the main accused persons, who carried out the dacoity and also providing

them a scooter. It is further alleged that cash amount was paid to the applicant thereby showing that he was a beneficiary and he enjoyed the fruits of the said crime.

7. It was submitted that even if the said material is to be taken into account, there is nothing to show that the applicant was part of the conspiracy to commit such an act of dacoity and to loot the victim of huge cash amount of Rs.14,90,000/-. It was submitted that the applicant has no criminal antecedents and therefore, this is the only FIR in which he is an accused with the alleged gang leader. In that sense, it was submitted that the provisions of the MCOC Act have been wrongly invoked against the applicant. It was submitted that the amount is already recovered from the applicant and since the applicant has suffered incarceration from 29.03.2022, which is for a period of about two years and nine months and the charge is yet to be framed thereby showing that the trial may not even commence in the near future, this Court may consider allowing the application.

8. On the other hand the learned APP vehemently opposed the application submitting that the applicant can be said to be actively involved in the present case because he provided accomodation and a two wheeler for the co-accused persons to carry out the said dacoity. He is a beneficiary of the said crime and his role is evident from the material available on record. It was submitted that serious offences have been registered against the applicant along with co-accused persons and the provisions of the MCOC Act have been invoked. This Court may not show any indulgence to the applicant.

9. This Court is perused the material on record, particularly the reply affidavit filed on behalf of the State and the statements of the accused persons, including the statement of the applicant herein. It is to be noted that even as per the reply affidavit and the statements placed on record therewith, the role attributed to the applicant is that he provided accomodation to the main accused persons, who committed the dacoity. The statements of the co-accused persons indicate that the conspiracy was hatched in the house of the applicant when he had gone out for work. It appears that there is sufficient material to indicate that the applicant was not aware before hand about the plans of the co-accused persons to carry out the dacoity, but he became aware about the same after the act was committed and the co-accused persons returned to his house. They allegedly gave him cash amount to keep his mouth shut and then proceeded to go to their native place in Rajasthan. Undoubtedly, there is material to indicate that the applicant did not report the matter to the police, rather he kept the cash amount given by the co-accused persons. But, even if the said material is taken into account, the role of the applicant is distinguishable from the main accused persons and it is not even alleged that he committed the dacoity or that the material on record indicates that he was actively involved in the conspiracy hatched by the co-accused persons to commit such dacoity.

10. It is relevant to note that co-accused person Shankar Singh Jalamsingh Kharvat, who was also present in the house of the applicant and who also can be said to have become aware about the act of the co-accused person, was granted bail by order

dated 12.06.2024 passed in Bail Application No.502 of 2024 despite the fact that the said co-accused person was also alleged to have taken cash amount of Rs.10,000/- from the main accused persons.

11. Considering the aforesaid material and also in the light of the admitted position that there is no other criminal antecedent of the applicant, this Court is inclined to allow the application.

12. In view of the above, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.0015 of 2022 dated 4th January 2022, registered at Waliv Police Station, Mira Bhayandar, on furnishing PR Bond of ₹ 50,000/- and one or two sureties in the like amount.
- (ii) The applicant, upon being released on bail, shall report to Waliv Police Station, Mira Bhayandar, on first and fourth Monday of every month between 10:00 a.m. and 12:00 noon during the pendency of trial.
- (iii) Upon release, within one week, the applicant shall inform the Investigating Officer as well as the trial Court about his contact number and residential address and update the same in case of any change.
- (iv) The applicant shall co-operate with the trial Court in completing the proceedings expeditiously and attend the proceedings before the trial Court on each and every date, unless specifically exempted, for the reasons to be recorded in writing.

(v) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not undertake any action that may influence the informant, witnesses and other persons concerned with the case.

13. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

14. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

[MANISH PITALE, J.]