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

CRIMINAL APPLICATION (BA) NO. 671 OF 2024

(Manish Kumar Veer Sain V/s The State of Maharashtra)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Vinod Kumar, Advocate for Applicant.
Mr. A. A. Madiwale, APP for Respondent/State.

CORAM : ANIL L. PANSARE, J.
DATE : NOVEMBER 25, 2024.

. Heard learned Counsel for the parties.

2. By this Application, Applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The Applicant has been arrested on 3/11/2021 in Crime No. 249/2021 registered with Police Station, Deori, District Gondia for the offences punishable under Section 395, 341, 342, 365, 323 of Indian Penal Code and Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control Of Organized Crime Act, 1999.

3. Briefly stated, case of the prosecution is that on 26/10/2021 the informant Arjun Sing Jadeja lodged FIR stating therein that he was travelling from Raipur to Nagpur in Scorpio bearing registration No. KA-05, MY-2215. When the informant reached at Masulkasa Ghat, 8-10 persons intercepted his vehicle and confined his movement by parking three vehicles around the

Scorpio. These persons beat the informant and snatched an amount of ₹ 35,000/- from him. On the basis of the report of the informant, Crime No. 249/2021 for the offences punishable under Section 395, 341, 342, 365, 323 of Indian Penal Code came to be registered. It appears that later on the offences punishable under Section 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organized Crime Act (*for short, 'the MCOC Act'*) read with Section 3/25 of Arms Act were also invoked.

4. It transpired during the investigation that the amount stolen was not ₹ 35,000/- but was ₹ 3.76 Crores. It has been revealed that the informant was not knowing that the envelope kept in the Scorpio contained cash. The informant was under the impression that the envelope contains documents. Be that as it may, the amount of ₹ 3.76 Crores is said to be stolen by the unknown persons from the Scorpio. Six accused were arrested on 3/11/2021 and part money was recovered from them. Two accused came to be arrested on 12/11/2021 and part money was recovered from them as well. Chargesheet has been filed under the provisions of Indian Penal Code so also the MCOC Act.

5. The learned Counsel for Applicant submits that the Applicant is involved in travel business and is owner of Scorpio vehicle, used in the crime. No overtact is attributed to the Applicant. The FIR was registered against unknown persons, and therefore, there arises no question of naming the Applicant in present crime.

6. The learned Sessions Court has rejected the application on the ground that the Applicant was seen in CCTV footage at various locations along with the co-accused in the said vehicle.

7. The learned Counsel for Applicant submits that his presence at various locations is seen, because his vehicle was hired by the accused persons. He further submits that the Applicant was not aware of the intentions of co-accused. Applicant's presence with co-accused is, thus, natural but is not sufficient to show his complicity with the crime.

8. Thus, what has been argued by the learned Counsel for the Applicant is that his vehicle was hired by the co-accused to commit the crime and that the Applicant was oblivious to the fact that his vehicle will be used for commission of crime.

9. In the aforesaid backdrop, the learned APP was called upon to show the evidence against the Applicant.

10. The only evidence against the Applicant is the confessional statements of co-accused Manish Pawar and Vikram @ Raju Juthaji Thakor. I have gone through both the confessional statements to find that no overtact is attributed to the Applicant, rather Vikram Thakor has, in a way, fortified Applicant's case that his vehicle i.e. Scorpio was hired by the accused persons.

11. The learned APP, however, submits that after dacoity, the Applicant had travelled further with some of the co-accused in

Verna Car from village Gadi, District Bagpat (UP) to Samlaji, District Himmatnagar (Gujarat). They were intercepted at Ansol Check-post within the jurisdiction of Police Station, Samlaji, District Himmatnagar (Gujarat) and amount of Rs.25,00,000/- was recovered from the Car. It is, however, nobody's case that amount was recovered from the Applicant.

12. At this stage learned Counsel for the Applicant submits that Verna Car was purchased by him, but was not transferred in his name. On this point, when a query was made with the Investigating Officer, who is present in the Court, as to who is the registered owner of Verna Car, he submits that Gokaran Singh Danoo is registered owner of Verna Car. His statement has been recorded. He stated that he had sold the vehicle to Kartik Sharma, whose statement is also recorded. Kartik Sharma has sold the vehicle to one Ashish. The Investigating Officer, however, could not get hold of Ashish and, therefore, his statement could not be recorded. Thus, it is unknown as to how did and under what authority the Applicant has arranged the Car.

13. Be that as it may, the role assigned to the Applicant is that he was driving the vehicles, firstly, the Scorpio and later Verna Car.

14. The learned APP submits that during interrogation the Applicant has admitted that he has received Rs. 80,000/-, however, nothing has been recovered from him. The co-accused, whose confessional statements have been recorded, have not disclosed

about payment made to the Applicant. Thus, there is no evidence on this point.

15. The prosecution has relied upon the CCTV footage. The Applicant admits his presence, however, the Investigating Officer has, for the reasons best known to him, not put the Applicant to Test Identification Parade. In other words, there is no witness, who has identified the Applicant to be the person who is seen in the CCTV footage.

16. Considering the above, even if the case against the Applicant as put-forth by the prosecution is accepted to be true, it will only create some suspicion of Applicant having played role in the crime, but may not be sufficient to prove the charges against him. To state differently, there are reasonable grounds to believe that he is not guilty of such offence. In fact, the case put-forth by the Applicant is suggestive of the fact that he was witness to the entire episode. Thus, on involvement of Applicant in the crime, there is hardly any material to prove his guilt.

17. So far as the Applicant's likelihood of committing other offence, if released on bail is concerned, I am informed that there are no criminal antecedents against the Applicant, and therefore, there appears to me no reason to believe that he will commit any offence, if released on bail. The Applicant is permanent resident of Gurana Road, Badoud, District Bagpat (UP). The learned Counsel for Applicant submits that the Applicant owns

immovable property as well. Thus, he has strong roots in the locality.

18. The chargesheet has been filed. The charges have not yet been framed. It will take time to commence and conclude the trial. In the circumstances and considering the nature of evidence against the Applicant, no fruitful purpose will be served by keeping the Applicant behind the bars. The Applicant has, thus, made out a case for releasing him on bail.

19. The observations made herein above are *prima facie* and are made only for the purpose of deciding bail application. The trial court shall not get influenced by the aforesaid observations.

20. Resultantly, the following order is passed.

ORDER

1. Criminal Bail Application is allowed.
2. The Applicant – Manish Kumar s/o Veer Sain be released on bail in Crime No. 249/2021 registered with Police Station, Deori, District Gondia for the offences punishable under Section 395, 341, 342, 365, 323 of Indian Penal Code and Sections 3(1)(i)(ii), 3(2), 3(4) of the Maharashtra Control Of Organized Crime Act, 1999 on he executing PR Bond in the sum of Rs. 50,000/- with cash surety of equal amount.

3. The Applicant shall attend the Police Station, Deori, District Gondia on 1st Monday of every month.
4. The Officer incharge of concerned Police Station shall apprise the Special Court of the attendance marked by the Applicant and shall take immediate steps, if the Applicant remains absent even on one occasion.
5. 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.
6. The Applicant shall regularly attend the court and co-operate to complete the trial for the above offences. The Applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial court.
7. 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.
8. The Applicant shall maintain law and order.
9. The Applicant shall surrender his passport, if any, before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file affidavit to that effect.

10. 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.
11. Criminal Application stands disposed of accordingly.

(ANIL L. PANSARE, J.)

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