Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1287 OF 2025

Hiren Bhawanbhai Waghela … Applicant
V/s.
State of Maharashtra … Respondent

Mr. Umesh Kumar a/w Mr. Sagar Pasi, Nirali Sharma for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for the State – respondent.

Mr. Vikas Jadhav, API and Mr. Pathan, PSI, Sion Police Station are present.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, read with Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOCA"), seeking regular bail in connection with Crime Register No. 166 of 2024, registered with Sion Police Station. The applicant is facing allegations for commission of offences punishable under Sections 395 (dacoity), 342 (wrongful confinement), 420 (cheating), 452 (house trespass), 170 (personating a public servant), 506 (criminal intimidation), 120-B (criminal conspiracy), all read with Section

34 (common intention) of the Indian Penal Code, 1860. In addition, the stringent provisions under Sections 3(1)(ii), 3(2), and 3(4) of the MCOC Act have also been invoked against the applicant.

2. As per the case of the prosecution, on 13th May 2024 at around 4:30 p.m., six unknown persons allegedly entered the house of the informant located at Sion, Mumbai, without permission. They allegedly pretended to be officers of the Crime Branch and showed fake identity cards to support their claim. They informed the informant that they had received intelligence that he was in possession of ₹17 crores in black money. Under this pretext, the accused persons are alleged to have looted cash amounting to ₹72 lakhs and gold coins from the residence, in the presence of the informant himself. During the course of investigation, based on the disclosure statement made by the present applicant, cash amounting to ₹97,000/- was recovered from his house. It is the prosecution case that after the applicant's statement, the crime was registered at the concerned police station. The applicant was thereafter arrested in connection with the said offence. It is pertinent to note that the applicant had earlier approached the learned Sessions Court seeking bail, but the same came to be rejected. Being aggrieved thereby, the applicant has approached this Court by filing the present application.

3. Learned counsel appearing on behalf of the applicant submitted that the specific role attributed to the applicant is limited to having conducted recce (surveillance) of the location prior to the incident. It is submitted that the applicant was allegedly in touch with one of the co-accused, namely Sagar, but there is no direct link shown between the applicant and the alleged gang leader, who is said to have masterminded the operation. It is further submitted that both Sagar and the gang leader were present at the spot at the time of incident, and are the main perpetrators of the alleged offence under Section 395 IPC. The applicant, on the other hand, is only alleged to have been in contact with Sagar. It is further submitted that the applicant has been arrested on 16 May 2024 and that he does not have any criminal antecedents to his discredit. The learned counsel therefore urges that considering the applicant's limited role, the absence of criminal antecedents, and the fact that investigation is substantially over, he may be released on bail with suitable conditions.

4. On the other hand, learned APP has opposed the bail application. It is submitted that the applicant maintained continuous contact with co-accused Sagar, who was physically present at the spot and directly involved in the offence. It is further pointed out that Sagar was in touch with the gang leader who masterminded the incident, and hence the chain of conspiracy extends to the applicant as well. The prosecution has highlighted the recovery of ₹97,000/- from the applicant's house as indicative of the proceeds of the crime. In view of the serious nature of the offence, the organised manner in which it was executed, and the involvement of multiple accused under the provisions of MCOCA, it is contended that the present application is devoid of merit and deserves to be rejected.

5. I have heard the learned counsel for the applicant as well as the learned APP for the State. I have also carefully perused the material placed on record, including the FIR, the charge-sheet, the statements of witnesses recorded so far, and the documents relied upon by the prosecution.

6. At the outset, it is to be noted that the applicant has been attributed a limited role of conducting recce prior to the incident. The main allegation of having committed dacoity by impersonating police officers and robbing a substantial amount of cash and gold appears to be primarily against co-accused Sagar and others, who were allegedly present at the scene and actively participated in the execution of the offence.

7. The prosecution has sought to establish the applicant's involvement primarily on the basis of his alleged communication with co-accused Sagar and the recovery of ₹97,000/- from his house pursuant to his disclosure statement. However, the prosecution has not placed on record any cogent material to show that the said recovered amount is directly connected with the looted amount. At this stage, it is also relevant to note that ₹97,000/- is a relatively small amount compared to the alleged amount of ₹72 lakhs looted, and no independent evidence has been brought on record to show any direct role of the applicant during the commission of the offence at the spot.

8. Furthermore, the applicant has no prior criminal record and is stated to be in custody since 16 May 2024. The investigation appears to have progressed substantially. Charge-sheet has already been filed and custodial interrogation of the applicant is no longer necessary. There is nothing on record to suggest that the applicant, if released on bail, would abscond or tamper with the prosecution evidence or influence witnesses.

9. It is also well settled that the rigours of Section 21(4) of the MCOC Act, though stringent, do not take away the discretion of the Court to grant bail in appropriate cases, particularly when prima facie there is no material to show the applicant's involvement in the organized crime syndicate or that he was part of continuing unlawful activity as defined under Section 2(1)(d) of the Act. The present case appears to be a single incident involving impersonation and robbery, and at this stage, the applicability of MCOCA to the applicant is debatable and requires deeper scrutiny at the stage of trial.

10. In view of the above circumstances, particularly the limited role attributed to the applicant, absence of antecedents, and considering that trial is likely to take time, I am of the considered view that the applicant deserves to be released on bail, subject to stringent conditions to ensure his presence during trial and to prevent any misuse of liberty.

11. On overall consideration of the aforesaid factors, the applicant has made out a case for being released on bail.

12. Hence, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant shall be released on bail in connection with Crime Register No. 166 of 2024 registered with Sion Police Station for offences punishable under Sections 395, 342, 420, 452, 170, 506, 120-B read with 34 of the IPC, Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.

(d) The applicant shall report to the Sion Police Station, Mumbai on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

(e) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(f) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(g) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

(h) The applicant shall not enter the jurisdiction of Sion Police Station, except for the purpose of marking his presence, as directed by the Investigating Officer or the Court.

13. The Bail Application is accordingly disposed of in above terms.

(AMIT BORKAR, J.)