


MHKO010047492023 	<u>Order below Exh.3 in Sessions Case No.276/2023.</u> Satish @ Sandip Sakharam Pohalkar Vs. State of Maharashtra
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1] This bail application is filed by applicant/accused No.1, Satish @ Sandip Sakharam Pohalkar under Section 439 of Cr.P.C. for bail.

2] **The prosecution story in nutshell is as under :-**

The informant is Goldsmith and proprietor of 'Katyani Jewellers', Balinge, Tal.Karveer. On 08/06/2023, at about 9.00 a.m., the said shop was opened by his relative Jitendra and at about 9.30 a.m., the informant and his son Piyush came into the said shop along with the cash of Rs.1,50,000/- for purchasing the gold for business. At about 2.00 p.m., four unknown persons entered said shop. One of them had pistol in his hand. He fired thrice upon the showcase of the said shop. The two of them assaulted the relative of the informant with base ball stick and one of them also assaulted the informant into his head. In said incident, the injured, Jitendra was trying to stop robbers, but the accused fired upon him and the said injured witness had sustained one gunshot injury to his left thigh. In said incident, the informant was trying to open the main door and calling the other peoples for help, but then other accused fired gunshot towards the peoples created terror and so no one was dare to come for help of the informant. After that, the four accused persons robbed the said shop and collected the gold ornaments along with them, worth of Rs.2,06,84,850/- and fled from the shop with the help of motorcycles. The informant and other injured admitted in the Hospital for further treatment. Thereafter, the

informant lodged FIR against the accused at Karveer Police Station vide C.R. No.406/2023, under Sections 395, 397, 120(b), 324, 323, 504 and 506 of I.P.C. and Sections 3, 25 of the Indian Arms Act.

3] The Ld. advocate for the applicant/accused Mr.S.R.Shinde argued that during investigation, the accused were arrested by the Police on suspicion that the accused had committed said dacoity with the help of other accused persons, who are belongs to other state. The present applicant No.1 is arrested only on suspicious ground and without assigning any specific role in the said case. The present applicant was not present and participated in said dacoity, but only with the help of Section 120 (b) of I.P.C., the applicant was arrested in said crime along with the other accused. Nothing is recovered and discovered from the possession of the present applicant to show the involvement of the applicant in said case. The investigation is completed and charge-sheet is filed. As alleged by the prosecution, the sections 395 and 397 of I.P.,C. are not applicable in present case.

4] The Ld. advocate for the applicant/accused pointed out the provision of Section 395 of I.P.C. and definition of Dacoity. To involve the applicant/accused in said case, there should be 5 person on the spot to commit the offence. When 5 or more persons conjointly commit or attempt to commit a robbery or where whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to 5 or more, every person so committing, attempting or aiding, is said to commit dacoity. Hence, accused No.1 was not present on the spot, whereas accused Nos. 4 to 7 are present on the spot. Hence, total 4 accused person were present on the spot at the time of commission of offence, which also found in CCTV footage, hence, Sections 395 and 397 are not applicable to the accused No.1 in present case.

5] The Ld. advocate for the applicant/accused relied on the following Judgments :-

A) *Rajdhani & Others Vs. State of Madhya Pradesh & Another, reported in 2015 Cri.L.J. (NOC) 232 (CHH)*, wherein the Hon'ble High Court held that -

“ When 5 or more persons conjointly commit or attempt to commit a robbery or where whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to 5 or more, every person so committing, attempting or aiding, is said to commit dacoity. Accused persons allegedly demanded amount of Rs.30,000/- from complainant by keeping his nephew in wrongful confinement and fear of death. No evidence of complainant with regard to any kind of role played by fifth accused in commission of offence. It is not case of dacoity but involvement of only four persons in commission of offence which would constitute only an offence of robbery. Conviction of accused persons altered from one under Sec.395 to Sec.392.”

6] The Ld. advocate for the applicant/accused further argued that the Investigating Officer in whole charge-sheet nowhere pointed out the role of accused No.1. The Investigating Officer collected all evidence after the arrest of the accused. The present applicant/accused No.1 and other accused are knowing to each other as they were previously in the jail together. As far as bail application is concerned, there is no evidence against the accused in charge-sheet. The Ld. advocate for the applicant/accused further argued that the accused be released on bail on terms and conditions.

7] The Investigating Officer and learned APP Mrs.A.A.Kulkarni strongly objected said application on the ground that the Investigating Officer filed CDR and electronic evidence along with charge-sheet. The Investigating Officer further submitted that the present accused has brought other accused on the spot for commission of offence and also he was along

with accused on the spot of incident. As well as he also went to drop the accused persons at Pune. There are call records between the present applicant/accused and other co-accused. The Investigating Officer filed CDR records as well as electronic evidence and analysis of CDR and phone calls between the accused.

8] In the above facts and circumstances, this Court found that the investigation is completed and charge-sheet is filed, but in the charge-sheet and in say of the Investigating Officer at Exh.4,, the Investigating Officer specifically has mentioned the role of the present applicant/accused No.1. The applicant/accused No.1 before brining the accused Nos. 4 to 7 at Balinga, Tal.Karveer, made preparation to commit the offence in informant's Jewellery shop. The applicant/accused No.1 is also Jeweler. The shop of the informant and present applicant/accused No.1 are situated in same area and in front of each other's shop. The applicant/accused No.1 supplied the information to other accused and made preparation to commit the offence. After incident, present applicant/accused No.1 shown a way to other accused to run away from the spot. The applicant/accused No.1 brought accused Nos.5 to 7 from the Ertica Car of Rahul Thorat from Tawade Hotel and dropped them to the house of accused No.2, Vishal Varekar. The applicant/accused No.1 before committing the offence stolen two motorcycles and hided them in front of his house. At the time of incident, the present applicant No.1 was moving on spot of incident in said area on his motorcycle. After committing of the offence, he along with accused No.2, Vishal Varekar went to Pune in Car to drop the accused, who are from other State. In the investigation, the Investigating Officer found 7 accused and all accused are not arrested in the said case. In the said offence, the Investigating Officer not seized all gold ornaments. The Investigating Officer wanted to recover cash amount from the accused. The present applicant/

accused No.1 is local resident and if he is released on bail, he will give threats to the prosecution witnesses. The applicant/accused No.1 committed pre-planned criminal conspiracy and after that he committed the offence. He is mastermind of the said case and he selected the Jewellery shop of the informant as he was knowing about how much gold was in Jewellery shop of the informant because he was knowing the informant before the incident and his shop is situated in front of the informant's shop.

9] In the said offence, other accused Nos. 4 to 7 made firing on the spot while running after committing the offence. Accused Nos. 4 to 7 are resident of State of M.P. Accused Nos.4 to 7 are having previous criminal records and cases are pending against them at State of M.P. Accused Nos. 4 to 7 are having cases against him, which are pending at State of M.P., Ambah, Murrena, Porasa Police Stations. Accused No.6 and 7 are not arrested as per the say of Investigating Officer.

10] Initially, it is found that the Investigating Officer has arrested present accused/applicant No.1 and accused No.2, Vishal Warekar and seized gold jewellery, motorcycle and a Car used in the Crime. This dacoity was carried out with the help of 4 more suspects from Madhya Pradesh State i.e., accused Nos. 4 to 7 herein. The robbers had stolen jewellery worth of Rs.1.8 Crore and cash amount of Rs. 1.5 lakh from a Jewellery shop. The informant Ramesh Mali and his brother-in-law, Jitendra Mali were injured as robbers fired bullet rounds on them. The gold ornaments weighing 367.720 grms. worth of Rs.22,65,155/- have been seized from accused Nos.1 and 2. Accused No.2, Vishal Varkar is having previous criminal record. Accused No.2, when he was in Kalamba Jail,, he met accused Nos.4 to 7 from State of M.P. and he planned crime when he came out from Jail with accused No.1, Satish. The Car of the accused was traced in CCTV footage moving towards

Pune. Two motorcycles i.e. one black coloured Pulsar Motorcycle and one orange coloured Pulsar Motorcycle are seized from the possession of present accused No.1, Satish Pohalkar.

11] This Court found that investigation is completed and charge-sheet is filed. There are sufficient evidence against applicant/accused No.1. The Investigating Officer filed CDR and electronic evidence and CCTV footage to show the role of the accused. It is also found that present applicant/accused No.1 is in contact with accused No.6, Harikesh @ Kuddpudi Tomar as well as in contact with accused No.4, Bhupendra @ Pavan Sharma and accused No.3, Ambaji Sulekar. It is also found that all accused are in contact through mobile phone before the incident and after the incident. As per the statement of witness, Satish Jadhav, accused No.1 Sandip Pohalkar used his Swift Car for the commission of offence, which found from the call records of the witness, Satish Jadhav and accused No.1, Sandip Pohalkar. As per the call records filed by the Investigating Officer along with charge-sheet, it is found that on 04/06/2023, the present applicant/accused No.1 took the vehicle i.e. Swift Car of witness, Satish Jadhav on rental basis. As per the charge-sheet, there are sufficient evidence against the applicant/accused No.1 that he planned the said offence and committed the offence under Section 120(b) of I.P.C. i.e. criminal conspiracy and offence under Sections 395 and 397 of I.P.C. r/w. Section 3, 25 of Arms Act. The offence is serious in nature and all accused are not arrested. The charge-sheet filed against accused No.1, is no ground to grant bail to the applicant/accused No.1. All muddemal i.e. gold and cash amount is not yet recovered. If accused is released on bail, he will give threats to the prosecution witnesses and the informant.

12] The Judgment cited by the Ld. advocate for the applicant/accused No.1, the facts and circumstances are different and not applicable to the present case. This Court agreed with the argument advanced by the Ld. APP and say of the Investigating Officer at Exh.4. Hence, this Court not agreed to grant bail to the applicant/accused No.1 at this stage. This Court proceed to pass following order.

ORDER

1. The regular bail application at Exh.3 of applicant/accused No.1, Satish @ Sandip Sakharam Pohalkar is hereby rejected.
2. The application is disposed of accordingly.

Sd/-
(Shailendra Tambe)

Date :- 31/01/2024

Additional Sessions Judge, Kolhapur.