


MHKO010047492023 	<b><u>Order below Exh.5 in Sessions Case No.276/2023.</u></b>  Vishal Shivaji Varekar Vs. State of Maharashtra
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1] This bail application is filed by applicant/accused No.2, Vishal Shivaji Varekar 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 he 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 came for help of the informant. After that, the four accused persons robbed the said shop and stolen the gold ornaments along with them, worth of Rs.2,06,84,850/- and fled away from the shop on motorcycles. The informant and other injured admitted in the Hospital for further treatment. Thereafter, the informant lodged FIR against accused at

Karveer Police Station being 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 the present applicant was not present and participated in said dacoity, but only with help of Sec.120 (b) of I.P.C., the applicant was arrested in said crime along with the other accused. Nothing is recovered from the possession of the present applicant to show the complicity of the applicant in said case. Now the investigation is over and charge-sheet is filed by the police. The mother of the applicant is suffering from Cancer and now she is taking treatment in Dr.D.Y.Patil Hospital, Kolhapur. Her physical condition is very critical. If she is not operated by the proper doctor and undergo right treatment, then it is highly probable to create immense danger to her life. In such circumstances, the applicant is only person, who managed all the funds and save the life of his mother.

4] The Ld.advocate for the applicant/accused produced on record medical documents of the applicant's mother vide Exh.11 to show that her mother is taking treatment in Dr.D.Y.Patil Hospital, Kolhapur. The applicant/accused also filed on record a pursis of his wife, Priyanka Vishal Varekar vide Exh.12 contending that applicant's mother is admitted in hospital and her physical condition is serious. The Ld. advocate for the applicant/accused further argued that the accused be released on bail on terms and conditions.

5] Heard Ld. APP for the State. He strongly objected said application on the ground that the offence is serious in nature. So that application be rejected.

6] Investigating Officer file say vide Exh.10 and strongly objected said application on the ground that the present applicant/accused committed said offence along with accused Nos.4 to 7, who are resident of State of Madhya Pradesh. Accused Nos.6 and 7 are absconding. All ornaments not are not recovered from accused. Accused committed said offence by using deadly weapons. If the accused is released on bail, he will commit similar offence and tamper the prosecution witnesses.

7] I have gone through the say of the Investigating Officer. So far as the role of the present accused is concerned, he called accused No.4 at Kolhapur for committing the said offence. So also present accused called accused Nos.5 to 7 at Kolhapur and hid them in his house and committed criminal conspiracy at his home. The applicant along with accused No.3 by using rental Swift Car dropped accused, who were from out of district at place of offence and after committing offence, shown them how to run from the spot. At the time of offence, applicant/accused was present at Koparde Phata. After committing the offence, accused went at his home along with stolen gold ornaments along with accused Nos.4 to 7 at his home. After committing offence, applicant/accused along with accused No.1 went at Pune by Swift Car to drop the accused, who were from other State. At present two accused are absconding in the said case.

8] This Court found that the Investigating Officer has arrested applicant along with accused No.1 and seized gold ornaments, motorcycle and Swift Car used in the said offence. This dacoity was carried out with the help of 4 more accused from Madhya Pradesh State. The robbers had stolen jewelery worth of Rs.1.8 Crore and cash amount of Rs. 1.5 lakh from a Jewelery shop. The informant Ramesh Mali and his brother-in-law, Jitendra

Mali were injured as accused (robbers) fired bullet rounds on them. The gold ornaments had seized from the possession of present accused and three cases are pending against the present applicant/accused No.2 being C.R.No.87/2022, registered at Juna Rajwada Police Station under Sections 406, 408, 420, 465, 467, 468, 477-A R/w.34 of I.P.C., C.R.No.379/2023, registered at Juna Rajwada Police Station under sections 379 R/w.34 of I.P.C. and C.R.No.313/2023, registered at Rajarampuri Police Station under sections 379 R/w.34 of I.P.C. Hence, it is found that the applicant/accused is having criminal antecedent.

9] It is found that, when the applicant/accused was in Kalamba Jail, he met accused Nos.4 to 7 from State of M.P. and he planned criminal conspiracy to commit offence. The Car of the accused was traced in CCTV footage moving towards Pune. Two motorcycles are seized in the present offence. The Investigating Officer filed CDR and CCTV footage to show the role of the accused. It is also found that present applicant/accused No.2 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 with each other through mobile phone before and after the incident. As per the charge-sheet, there are sufficient evidence against the applicant/accused No.2 that he planned the criminal conspiracy and committed 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.

10] The Ld.advocate Mr.S.R.Shinde argued that there is no specific role assigned to the present applicant/accused No.2 and only he found alongwith other accused at his home is no ground to involve and arrest the

accused in said offence. The mother of the present applicant/accused is suffering from Cancer and she is admitted in the hospital, so that accused be released on bail on terms and conditions

**11]** In the above facts and circumstances, this Court found that the investigation is not completed and all accused are not arrested. 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. This Court agreed with the argument advanced by the Ld. APP and say of the Investigating Officer at Exh.10. 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.5 of applicant/accused No.2, Vishal Shivaji Varekar is hereby rejected.
2. The application is disposed of accordingly.

Sd/-  
(Shailendra Tambe)

Date :- 14/02/2024

Additional Sessions Judge, Kolhapur.