



Order below application vide Exh.13 for grant of bail
under Section 439 of Cr.P.C.
(Passed on this 16th day of May, 2023)

Applicant/accused No.1 Takkusing @ Naginising S/o. Ajitsing Kalyani has filed this application under Section 439 of Code of Criminal Procedure for regular bail in Crime No.589/2022 registered with the Vivekanand Chowk-Police Station, Latur for the offences punishable under Sections 395, 397, 120-B of the Indian Penal Code and U/Sec. 4 punishable U/Sec. 25 of the Arms Act.

2. It is case of the prosecution that, on 12.10.2022, the informant Akash Rajkamal Agrawal lodged report alleging therein that, since last ten years his father Rajkamal Agrawal is doing the business of Plotting and since 2005 he is running Hardware shop, other shops and Nail Factory. On 11th Oct. 2022 at or about 10.30 p.m. his mother and father slept in a bedroom on ground floor and he, his wife and children slept in a bedroom on a first floor. At or about 3.00 a.m., the five unidentified persons having armed Pistol, Knife and Katti entered into their house, given life threat to the informant and his family members by pointing Pistol and other weapons and committed theft of cash amount Rs.2,25,00,000/- and gold & silver ornaments worth Rs.73,09,500/-. In this way, the accused committed the offence of dacoity.

It is further contended that, the charge-sheet has been filed and the case has been committed. The complaint was lodged against unknown persons. The applicant/accused is falsely implicated in this crime. No incident as alleged by the complainant had taken place. The complainant has not produced on record any documentary evidence to show that such huge amount and gold wa in the house. None of the witness has identified the applicant/accused. The case of the prosecution about arresting all the accused on the one and same day is highly unbelievable. Mere confessional statement of co-accused is not sufficient to involve the applicant/accused in this matter. The recovery is doubtful. I.O. has carried out false investigation. The investigation is completed, so there is no question of tampering prosecution evidence. It is well said that, the bail is rule and jail is exception. The applicant/accused permanently resides in Pune District. There is no possibility of absconding or tampering the prosecution evidence. Hence, this application.

3. Investigating officer has filed reply vide Exh.16 and the same has been adopted by the Ld. A.P.P. by filing pursis vide Exh.17.

It is contended by the investigating officer that, on 12.10.2022 at or about 3.00 a.m., the applicant/accused and other co-accused entered into the house of informant, by putting the informant and his family members under fear by pointing fire arm Pistol, Knife and Katti committed theft of cash amount of Rs.2,25,00,000/- and gold ornaments worth Rs.73,09,500/-. It is

further contended that during investigation an amount of Rs.40,00,000/- and gold ornaments worth Rs.29,03,513/- has been seized from the applicant/accused. It is further contended that, the applicant/accused has criminal background. Nine crimes have been registered against him for the offences of property and human body including punishable under Sec. 302 of I.P.C. The remaining absconding accused are yet to be arrested. So, urged to reject the application.

4. Heard, Ld. Advocate appearing for the applicant/accused and Ld. A.P.P. appearing for the prosecution.

5. The Ld. Adv. Shri.G.J. Mitkari, Deputy Defence Counsel appointed through State drew attention of this Court on the FIR, statement of informant, spot panchanama, statement of witnesses i.e., the family members of informant and submitted that, as per the statement of the informant only four persons were came into the informant's bungalow, the entry of the accused in the informant's bungalow was not forcible or through any passage made by them, the contents in the FIR doesn't show that, the accused used force or violence or put the informant and his family members under fear or caused hurt, the statement shows that, the accused were addressing the wife of first informant by 'Tai'. There was Watchman, but he doesn't come into picture till completion of the entire episode, there is no evidence about having huge amount and huge gold ornaments as mentioned in FIR, there is no documentary evidence about belonging such ornaments by the informant and his family members, the arrest and recovery of the

applicant/accused is doubtful. It is further submitted that, the first informant might have insured his property with Insurance Company and to get the benefits from the said company, false crime has been registered and involved the applicant/accused in such false crime. It is further submitted that, investigation is over. The basic rule of Criminal Justice System is a bail and not jail. To support this submission reliance is placed upon the judgment of the Hon'ble Apex Court in **Arnab Manoranjan Goswami Vs. State of Maharashtra** (2021) 2 SCC 427 and the order of the Hon'ble Bombay High Court in Bail Appln. No.1406/2022 dated 14th July 2022 between **Raju Jokhanprasad Gupta Vs. State of Maharashtra**.

6. Per contra, Ld. APP submitted that, the accused has committed the offence of dacoity. Four accused entered into house and one was aiding them by standing at main door. There is prima-facie material on record about involvement of the accused in such serious crime. The part of the stolen property i.e. cash amount of Rs.40,00,000/- and gold ornaments of 559.35 grams have been recovered from the accused. The six live cartages have been seized as per the disclosure statement made by the applicant/accused. The said cartages were recovered from bushes adjacent to Solapur-Pune Highway within jurisdiction of Indiapur. The remaining five accused are yet to be arrested. So, urged to reject the application.

7. This Court carefully gone through the bail application, reply of the prosecution, material on record, submissions at the bar

and the case laws cited supra on which the Ld. Advocate for the applicant/accused relied.

8. The crime has been registered against the applicant/accused and co-accused for the offences punishable U/Sec. 395, 397, 120-B of I.P.C. and U/Sec 4 punishable U/Sec. 25 of the Arms Act. The charge-sheet has been filed U/Sec.173 of Cr.P.C. against the applicant/accused and other three co-accused namely Balu @ Balusing Tak, Kishor Ghangaov and Ganesh Ahire. The charge-sheet has been filed U/Sec. 299 of Cr.P.C. against the absconding accused namely Ramsing Bhaund, Soorajsing Junni, Chotu Pahilwan, Vijay Gaikwad and Vicky Kamble.

9. The material on record shows that, the alleged incident took place on 12.10.2022 at or about 2.30 to 3.30 hours. After the incident, the various Police Teams were formed in search of dacoits. On 21.10.2022, as per the secret information, the co-accused Kishor S/o Narayan Ghangaov was taken in custody from his house and in the inquiry, he disclosed about the involvement of the applicant/accused Takkusing Kalyani. On perusal of the statement of Sachin Gangaram Dronacharya, API, Local Crime Branch, it appears that he was in the Squad No.2. He inquired with the co-accused Kishor Ghangaov and he disclosed that prior to two years he did the electric work in the house of Agrawal and at that time, he saw Tijori and entire house of informant. He had knowledge that lot-of money is always used to be in the house. So, he decided to commit theft. He shared his idea of theft to his friend Vijay Gaikwad. Then, Vijay Gaikwad introduced him Ganesh

Ahire. Ganesh Ahire had called his son-in-law Vicky Kamble. Then, in the month of August-2022, meeting was held in the old house of Vijay Gaikwad at Pachpir Nagar, Babhalgaon Road, Latur between them. In the said meeting, Vicky Kamble introduced about his friend Takkusing Kalyani i.e. applicant/accused and Takkusing Kalyani agreed to commit theft with his other four associates. Accordingly, on 11.10.2022 at or about 1.00 p.m. Applicant/accused and his associates came at Tuljapur Chowk, AUSA. The co-accused went from Latur to AUSA and met applicant/accused and his associates. Applicant/accused introduced his associates to the co-accused Kishor S/o Narayan Ghangaov. The co-accused Kishor discussed with applicant/accused and then in the evening he brought applicant/accused and his associates to Latur in gray coloured Maruti Izzo Car and shown the house of first informant situated at Kanhya Nagari, Latur. He further disclosed details about incident of dacoity and after completion of incident proceeding towards Pune in the same vehicle and dropping one by one associates on the way by distributing the stolen gold and silver ornaments and cash amount.

10. On perusal of report dated 21.10.2022 of P.S.I. Shailesh Jadhav, it appears that as per secret information he went to Ramtekadi Hadapsar, Pune on 21.10.2022 at or about 7.00 a.m. There was one partly open cloth shop. One person was sitting in that shop. Police inquired with him about the incident of dacoity. That person told his name as Takkusing @ Naginsing. On search of the said premises cash amount of Rs.40,00,000/- and gold

ornaments worth Rs.29,03,513/- were seized from blue coloured plastic barrel kept in right corner of the said shop.

11. The first informant stated in his supplementary statement dated 14.10.2022 about the theft of six live cartages of his licensed revolver. On perusal of memorandum panchanama dated 21.10.2022, it appears that, as per the disclosure statement made by the applicant/accused two black coloured coats and six live cartages have been seized in bushes adjacent to service road to Solapur- Pune Highway at Indapur. This shows about the special knowledge of the applicant/accused and his involvement in the offence of dacoity.

12. The electronic evidence i.e. CCTV footage on the Toll Plaza on road between Solapur to Tuljapur and Tuljapur to Latur is also on record about the passing of the Vehicle Maroti Icco Car.

13. The Ld. Advocate for the applicant/accused given much tress on the statement of the informant that, there were four persons entered into the bungalow. So, the offence under Section 391 of I.P.C. is not made out. But, as discussed above, in the statement of the informant and witnesses, he has stated that four dacoits entered into the house and one was aiding them by standing at main door. So, there is no much substance in this submission. The Ld. Advocate argued about the entry of the accused in the house and silence of watchman during this episode. But, this aspect will be considered at the time of trial and not at this stage. The Ld. Advocate also submitted about contradictions

in the FIR. So far as contradiction is concerned, it is pertinent to note that the trial is yet to begin.

14. The evidence on record prima-facie disclose about involvement of the applicant/accused in such serious offence. The absconding accused are yet to be arrested. Considering the nature of offence, its gravity and seriousness, the applicant/accused doesn't deserve to be enlarged on bail. Hence, following order.

ORDER

Application is hereby rejected.

(Dictated & pronounced in the Open Court.)

Latur

Dated : 16.5.2023.

(D. B. Mane)

**Additional Sessions Judge-4,
Latur.**