

MHPU140027622020



Sessions Case No. 127/2020

Akya @ Akshay Balasaheb Wavare

Vs.

State of Maharashtra

ORDER BELOW EXH.16

This regular bail application has been filed by the applicant/accused under Section 439 of the Code of Criminal Procedure in connection with Crime No. 421/2020 registered for the offences punishable under Sections 394, 395, 397, 120-B of the Indian Penal Code, at Daund Police Station.

2] The prosecution case in nutshell is as under :-

On 29.08.2020 informant Sagar Mahajan was called by his master at about 6.30 p.m. and directed him to go to Solapur for purchasing maize. He also directed to take Ganesh Jadhav as cleaner along with him. He handed over one blue coloured cloth bag containing cash amount of Rs. 29,74,000/-. The said bag was stitched from all sides. Accordingly, informant proceeded towards Solapur. When he was passing the water reservoir at Malad one black coloured motorcycle followed them. The motorcycle rider was giving him signal to stop. Accordingly, informant stopped his vehicle in the light of Hotel Vrindavan Garden. The said motorcycle was in front of his vehicle. There was another motorcycle standing at some distance. One of the motorcyclist opened

the driver side door and pull out the key and the another person pulled driver i.e. informant. At the same time, the other person entered in his vehicle and sat on the driver sit. Other two persons pulled him in front of tempo. They assaulted him by slaps and pushed him in a ditch by the side of the road. When he came out of the ditch, he saw that the person who was sitting on the driver sit was running holding the cloth bag. All the accused persons ran towards Solapur on their motorcycles. Informant also ran and tried to chase the motorcycle. He caught hold the shirt collar of one of the pillion rider. The accused raised the motorcycle. Therefore, informant fall on the ground and sustained injuries over his knee. The said incident took place at about 7.45 p.m. All the four accused persons were of 5.5 feet high. Informant while lodging report gave the description of the cloths worn by the accused persons. Hence, the report.

3] The applicant-accused contended that he is innocent. He did not commit any offence. He has falsely been implicated in the crime. There is delay in lodging of he report. None of the section is attracted to the present crime. His name is not mentioned in the F.I.R. The alleged Test Identification parade is suspicious. Other co-accused have been released on bail, therefore, he is also entitled for bail on the ground of parity. He is behind the bars since last one year and three months. Investigation is completed and charge-sheet has been filed. Nothing is remained to recover or

discover at his instane. He is the only earning member of his family. He is college going student taking education in F.Y.B.Com. He is ready to abide by the conditions imposed upon him. Hence, prayed to allow the application.

4] The Investigating Officer and the learned APP opposed the application by filing say at Exh.17. It is contended that the offence is serious one. The applicant accused has been identified by the witnesses during Test Identification Parade. All the accused persons have looted amount of Rs. 29,74,000/-. There are other offences registered against him. He is an habitual offender. Rs. 3,00,000/- cash has been recovered from him during his custodial interrogation as per the memorandum panchnama carried out under section 27 of the Indian Evidence Act. If released on bail, applicant-accused may commit similar type of offences, tamper prosecution evidence or may flee away. Hence, prayed for rejection of application. Ld. A.P.P. also objected the application on the similar grounds by filing his say on the overleaf of the application (Exh. 16) itself.

5] Heard learned Advocate Mr. N. G. Shah for the applicant-accused and learned A.P.P. Mr. P. G. Joshi. I perused the documents on record. Present applicant-accused had filed Criminal Bail Application No. 1240/2020, which came to be rejected by this Court on 29.12.2020.

6] Ld. Advocate for the applicant-accused has filed on record copies of orders passed in Cri. B. A. Nos. 1105/2020, 1198/2020 and 736/2021. The case of these co-accused stands on different footings from that of the present applicant-accused.

7] Ld. Advocate for the applicant-accused has also relied on order passed by Hon'ble Bombay High Court in Criminal Bail Application No. 1576 of 2021 dated 05th April, 2022, whereby co-accused No. 4 Jadya @ Paigambar Tayyub Mulani has been released on bail. The role played by co-accused No. 4 is similar to that of the present applicant-accused. Both the co-accused No. 4 and present applicant accused were identified during the same Test Identification parade. Similarly, there is recovery of cash amount from both the accused.

8] Ld. Advocate for the applicant-accused has relied on following case laws:

- (i) ***Ardish Beg @ Raju Vs. The State of Jharkhand [B.A. No. 1534 of 2017, decided on 08th June 2017].***
- (ii) ***Sri Srinivasa @ Seena Vs. State of Karnataka [Criminal Petition No. 3700 of 2014 decided on 31st July, 2014] and***

The above cited case laws are on the point of applicability of rule of parity. Same have been considered while deciding present application.

9] Ld. Advocate for the applicant-accused has also submitted that merely registration of other crimes will not be a bar to release the accused on bail. In support of his submission he has relied on ratios laid down in the following case Laws:

- (i) ***Rajesh Babanandan Shah @ Damchya Vs. State of Maharashtra [Criminal Application No. 341 of 2006 decided on 14th March 2006].***
- (ii) ***Ramjan Bhappu Sakka Vs. The State of Maharashtra [Criminal Application (BA) No. 87 of 2022 decided on 07th March, 2022].***

10] Ld. Advocate for the applicant-accused has also relied on ratio laid down by the Hon'ble Bombay High Court in case of ***Sajid Basir Shaikh Vs. State of Maharashtra [2005(3) MhLj 860]*** on the point of defective Test Identification Parade and the ratio laid down by the Hon'ble Apex Court in case of ***Mohammad Chand Mulani Vs. Union of India and Ors. [Appeal (crl.) 977 of 2006 decided on 18th September 2006]*** on the point of delayed trial.

11] Ld. Advocate for the applicant-accused also relied on some documents such as documents regarding immovable property, Aadhaar cards of the applicant-accused and his father, Death Certificate of Kusum Bhiva Wavare, property extract, Bank statement, Educational Certificates, Caste Certificate and Medical Documents of one Kusum Wavare.

12] Considering all these documents and the evidence collected by the Investigating Officer in the light of cited rulings, it is clear that the applicant-accused is entitled for bail on the ground of parity. So far as apprehension raised by prosecution is concerned, imposition of stringent conditions may suffice the purpose. Hence, the order.

ORDER

1. This bail application is allowed.
2. The applicant-accused namely **Akya @ Akshay Balasaheb Wavare** be released on bail on his executing P. R. Bond of Rs. 25,000/- with one or two solvent sureties of like amount only in this Crime No. 421/2020 registered for the offences punishable under Sections 394, 395, 397, 120-B of the Indian Penal Code, at Daund Police Station, on the following conditions :-
 - A) He shall not tamper with prosecution evidence in any manner.
 - B) He shall not threat the prosecution witnesses and victim.
 - C) He shall not commit similar type of offence.
 - D) He shall not leave India without prior permission of the Court.
 - E) He shall comply with Chapter I Paragraphs 1 to 6 of the Criminal Manual 1980 (In view of order of the Hon'ble High Cour passed in Criminal Application No. 28 of 2010 in Public Interest Litigation No. 25/2010 on January 29, 2020).

- F) He shall furnish his permanent address with proof.
- G) He shall undertake to remain present before the Court during the course of trial, unless exempted.

3. If he disobeyed any of the above conditions, the prosecution is at liberty to move the Court for cancellation of bail.

Date :- 18.04.2022.

(J. P. Darekar)
Additional Sessions Judge,
Baramati.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per original Order.

Name of Stenographer : I. E. Deshmukh
Stenographer (G-1)

Court Name : J.P. Darekar
Additional Sessions Judge,
Baramati, Dist. Pune.

Date of Order : 18.04.2022

Order signed by
Presiding Officer : 18.04.2022

Order uploaded on : 18.04.2022