

MHRG170002402023



COMMON ORDER BELOW EXH. 09 AND 12
IN SESSIONS CASE NO.26/2023
KHARGHAR C.R.NO.134/2022
THE STATE OF MAHARASHTRA - V/S.- RIZWAN IMRAM
KHAN AND OTHERS
(PASSED ON 03rd DAY OF OCTOBER, 2023)

Applicant/accused No.1-Rizwan Imran Khan and applicant/accused No.4- Mohammad Jamal @ Aayan @ Dipak Akhtar Ansari moved this application vide Section 439 of the Code of Criminal Procedure to enlarge them on bail.

2. This application is strongly opposed on behalf of prosecution vide Exh.10 and 13.

3. Points for the determination and my findings thereon for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicants/accused on bail vide Section 439 of the Code of Criminal Procedure ?	Yes.

II.	What Order ?	Applications are Allowed.
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REASONS

4. Perused application, say filed. Heard learned advocate Shri.Shukla for the applicant/accused No.1, advocate Shri.Mahesh Gunjal for accused No.4 as well as learned A.P.P. Shri.C.Y.Patil for the State. Heard investigating officer. Heard informant and his advocate Shri.Akash Dongre h/f advocate Shri.D.S.Patekar.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant is one Milind Gulabrao Watare, resident of Mundawa, Pune. He was in need of gold for jewelry in marriage. He spoke to his friend Sudhakar Ramchandra Yevalekar. His friend suggested name of person namely Vinod Choksi for purchase of gold at lower rate. On 03.05.2022, informant, his friend Sudhakar and one Manoj Prakshale have been towards the person namely Vinod Choksi. He introduced with one person by name Mr.Khan. Later on, on 14.05.2022, 60 gm gold was taken from them for Rs.3 Lakh. Said gold was pure

gold. Then subsequently, informant made demand of 1 kg gold in view of Rs.40 Lakh. On 21.05.2022, informant alongwith his friends Sudhakar, Manoj and Sandbhor have been there to purchase 1 kg gold as such, carried cash of Rs.39 Lakh with them. Informant handed over cash of Rs.39 Lakh to Mr.Khan. One car came displaying dashboard as police. There were four persons inside the car. Those persons posed them as police and started use of stick to scare them. The said persons have carried Mr.Khan and cash of Rs.39 lakh with them. The informant tried to contact to Vinod Choksi and to Mr.Khan, but they have not responded.

6. On that count, the informant lodged the report dated 21.05.2023 at Police Station, Kharghar. The Police Station officer, Kharghar registered Crime No.134/2022 for the offence under Section 420, 170, 34 of the Indian Penal Code against accused Mr.Khan, Vinod Choksi, four persons came in car and one stud. Later on name of present applicants/accused disclosed during investigation. The investigating officer further added Section 395, 120-B of the Indian Penal Code.

7. The police arrested the accused/applicant No.1 on 29.05.2022 and accused No.4 on 03.06.2022. Initially they were remanded to police custody and later remanded to judicial

custody. Presently, the applicants/accused are in Judicial Custody.

NOTICE TO VICTIM :

8. In the light of directions of Hon'ble Apex court in the case of **Jagjeet Singh V/s. Ashish Mishra @ Monu in Criminal Appeal No.632/2022 Dated 18.04.2022**, a victim is entitled to be heard at the stage of adjudication of bail application of accused. Relying upon these observations, the notice is issued to the informant. The informant is appeared and engaged private advocate Shri.D.S.Patekar. He objected to release the applicants on bail.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

9. The present prosecution is based on allurements of providing gold at lower rate. The informant is the victim. He was in need of gold for the marriage of daughter of his brother. He asked to his friend Mr.Sudhakar and his friend contacted to Mr.Vinod Choksi. This person Mr.Choksi further contacted to Shri.Khan. The informant hails from Pune whereas accused hails from Mumbai.

10. Initially the transaction was for purchase of 60 gm gold in lieu of Rs.3 Lakh on 14.05.2022. Thus, accused have

gained confidence of informant and his friends towards purchase of the gold in lower rate. Thus, further informant agreed to purchase 1 kg gold for Rs.40 Lakh. Thus on 21.05.2022, informant carried cash of Rs.39 Lakh with him. He was alongwith his friends. The informant handed over amount of Rs.39 Lakh to Mr.Khan and later unknown persons came in police uniform and taken away to him with said cash.

11. On the backdrop of this prosecution case apparently, it has principal involvement of Mr.Vinod Choksi and one Mr.Khan. The investigation of this crime was assigned to P.S.I Shri.S.A.Yadav. The informant through his advocate raised grievances in respect of the manner of investigation. The amount of Rs.8,40,000/- from Rs.39 Lakh is seized. Presently the said amount is returned to the informant as per order below Exh.3 Dated 04.05.2023.

12. The investigation of this crime is over and charge-sheet is filed against accused No.1-Rizwan Imran Khan, accused No.2-Nagraj Gauda, accused No.3-Ashraf Shamim Kazi and accused No.4-Mohammad Jamal @ Aayan @ Dipak Akhtar Ansari and accused No.5-Attaullah Khan @ Salim Khan and others are shown as absconding accused.

13. On perusal of the charge-sheet, it appears that

statement of informant, spot panchnama, statement of friends of informant namely Sudhakar Yevalekar, Manoj Prakshale, Sudhir Sandbhor are recorded. The statement of car owner namely Vijay Hemant Malwankar, seizure panchnama, memorandum panchnama, seizure panchnama of auto-rickshaw, seizure panchnama of a car are appended with the charge-sheet.

14. The incident took place proximate to the CCTV installed. The said issue was raised during course of hearing of application for bail earlier as such, the investigating officer filed supplementary charge-sheet annexing CCTV footage, certificate under Section 65B of Evidence Act, supplementary statement of informant.

15. The investigating officer during course of investigation taken possession of the person namely Vinod Choksi and Mr.Khan and after interrogation left them. The recitals of FIR reveals names of both accused. The remand papers of the arrested accused reveals name of Mr.Choksi and Mr.Khan as wanted accused. The case diary appended to the charge-sheet reveals the names of these two persons as wanted accused. The informant, his advocate as well as learned prosecutor objected on this count that the main culprits are Mr.Choksi and Mr.Khan.

16. The investigating officer is called upon. Initially he avoided to attend hearing of this bail application twice as such, instruction was given to the prosecutor and then the investigating officer Shri.Yadav appeared before the court. He submitted that he did not find involvement of Mr.Choksi as such, he has not impleaded him as accused. Further he denied that Mr.Khan was taken in possession for interrogation. The investigating officer tried to mislead the court against the entries taken in the case diary and also tried to connect the name of Mr.Khan with name of accused No.1-Rizwan Khan.

17. In reply, learned advocate of accused Shri.Shukla as well as learned A.P.P Shri.C.Y.Patil invited attention of this court that Mr.Choksi as well as Mr.Khan – accused No.5 have taken in possession by this investigating officer. The case diary dated 25.05.2021 reveals that Mr.Khan was taken in possession and later he was released since he was not co-operating to the investigating agency. Further the case diary dated 10.06.2022 reveals that Mr.Choksi was taken in possession, but he was released since his active participation was not transpired.

18. On the backdrop of these entries to the case diary apparently, it creates doubt about the investigation carried out by Mr.Yadav. These two persons have name in FIR. According to the recitals of FIR, they are principal offenders. Even after taking

them in possession, he released them without assigning any reasons. If he has not noticed their involvement then he could have forward a report under Section 169 of the Code of Criminal Procedure.

19. Subsequently, the investigating officer at the time of filing charge-sheet impleaded Mr.Khan as accused No.5. Mr.Choksi is neither impleaded as accused nor shown him as a witness. Further the investigating officer has recorded statement of car owner Mr.Malwankar. According to his statement, on the day of incident, he handed over his car to driver Vishal Tupe. However, the investigating officer has not chosen to record statement of this driver in order to collect further information of that day.

20. The investigating officer Shri.Yadav initially has not collected CCTV footage, but when this issue was raised during course of hearing of bail application earlier then Shri.Yadav immediately collected CCTV footage and filed with the help of supplementary charge-sheet. Learned prosecutor that time instructed him without scrutiny the charge-sheet should not be filed. However, the investigating officer instead of sending charge-sheet before the committee directly filed it before learned magistrate. Even he has not taken pains to inform committee that he filed charge-sheet directly. All these lacunae were asked

to the investigating officer, that time he has replied evasively that he was in rush for investigation and travel to Himachal Pradesh.

21. On the backdrop of this lacunae and defects in the investigation intentionally omitted by investigating officer Shri.Yadav in order to extend help to Mr.Choksi and Mr.Khan. Though they have been taken in possession still he released them on his own accord. He has not chosen to arrest them for further investigation. He seized amount of Rs.8,40,000/- against the amount of Rs.39 lakh involved in the incident. These are the material lapses on the part of investigating officer Shri.Yadav. These lapses are not exonerable as such, it warrants further departmental action against him. Hence, this matter shall be referred to Commissioner of Police, Navi Mumbai.

22. Apart from this, on perusal of the entire charge-sheet, it appears that the evidence against accused No.1-Rizwan Khan is to the extent of recovery of money of Rs.8,40,000/- vide Section 27 of the Indian Evidence Act. The evidence against accused No.4 is in respect of CCTV footage wherein the supplementary statement of informant reveals that this accused No.4 has shown him the fake gold biscuits. Further the seizure of auto-rickshaw by virtue of seizure panchnama is at the instance of accused No.1.

23. The principal offenders Mr.Choksi and Mr.Khan-accused No.5 have been kept away from the scene of crime by this investigating officer. This lapse on his part ought to be viewed seriously. His conduct in carrying investigation is under cloud of doubt. The material evidence against these accused has not come forward.

24. The evidence which is available against accused No.1 and 4 is without nexus of other material evidence. These accused are behind bar for more than one year. During incarceration, accused No.3-Ashraf Shamim Kazi is passed away and case is abetted against him. The report of Talaja prison after conducting inquiry as to his death is also placed on record.

25. In the light of submission on behalf of learned advocate for accused No.1 and 4 coupled with reasons foregoing, there is no propriety to let them behind bar for further unending period. The reply filed by the investigating officer is silent as to the involvement of accused No.1 and 4. On all these grounds, accused No.1 and 4 deserve for bail. I answer Point No.I in the affirmative. The copy of this order shall be forwarded to Commissioner of Police, Navi Mumbai for departmental action against investigating officer. The investigation in respect of Mr.Choksi and Mr.Khan is incomplete as such, concerned police station is at liberty for further report in view of Section 173(8) of

the Code of Criminal Procedure. With this, I pass following order ;

ORDER

1.	The applications for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant/accused No.1 - Rizwan Imran Khan and applicant/accused No.4- Mohammad Jamal @ Aayan @ Dipak Akhtar Ansari are allowed.
2.	Applicants/accused be released on bail on furnishing P.R. and S.B. of Rs.25,000/- each (Rs. Twenty Five Thousand) with one surety in the like amount on the following terms and conditions ;
i.	Applicants/accused shall assist to Investigating Officer whenever called under written intimation.
ii.	Applicants/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against them so as to dissuade them from disclosing such facts to the Court or to any police officer.
iii.	Applicants/accused shall not tamper prosecution evidence in any manner.

iv.	A soft copy of this bail order be forwarded to applicant/accused through Superintendent, Taloja Jail by e-mail for information in view of observation of Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) NO.4/2021, Dated 31.01.2023.
3.	The concerned police station is at liberty for further report against Mr.Choksi and Mr.Khan with the aid of Section 173(8) of the Code of Criminal Procedure.
4.	A copy of this order be forwarded to Commissioner of Police, Navi Mumbai through confidential letter for departmental action against the investigating officer Shri.S.A.Yadav-P.S.I presently posted at Kamothe Police Station.
5.	Inform to Kharghar Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

Date : 03.10.2023.

(K.G. Paldewar)
Additional Sessions Judge,
Panvel

Arguments heard on	18 th Day of September, 2023.
Judgment delivered on	03 rd Day of October, 2023.
Dictated on	03 rd Day of October, 2023.
Transcribed on	03 rd Day of October, 2023.
Checked and signed on	03 rd Day of October, 2023.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same and as per the original Judgment/Order.

Name of the Stenographer : P.S.Mhatre
 Name of the Court : Additional Sessions Court,
 Panvel
 Date of Judgment/Order : 03.10.2023.
 Judgment/Order signed on : 03.10.2023.
 Presiding Officer : K.G. Paldewar
 Judgment/Order uploaded on : 03.10.2023.