



ORDER BELOW EXHIBIT 10

(State of Maharashtra Vs. Akshay Mohite etc.7)

1. This is an application filed by applicant/accused No.4 Kiran Dhondiram Kambale under section 439 of Cr.P.C.

2. Prosecution case in nutshell is as under:-

On 25/05/2022 informant was travelling from Ratnagiri Kozicode (Kerala) by Cochivali Express. At about 8.00 p.m. train stopped at platform No.2 of Kudal Railway Station where two persons boarded in Coach No.A-2 where informant was sitting. They posed themselves to be a police and told the informant that they want to conduct his search. It is further narrated that, on the pretext of search, informant was dragged outside the railway platform, meanwhile train left. As soon as these two persons saw that the train has left, they left the informant. Then informant tried to catch the train by Wagon'R but his efforts went in vain. So he rang his friend Akshay, R/o. Kozicode, Kerala and asked to collect his two bags from the train. Friend Akshay boarded in the train at Mangalore Railway Station and tried to collect the bag, but those were not found. Then he enquired with neighbouring passenger Yusuf and came to know that when two persons dragged the informant outside the train at Kudal Railway Station, other two persons boarded in the train and took those two bags with them. Thus, initially he lodged the complaint of dacoity upto Rs.2,00,000/- but afterwards it revealed in the investigation that, all the accused in furtherance of common intention committed the offence under section 395 of I.P.C. and grabbed amount of

Rs.42,00,000/- . The offence was registered vide C.R. No. 106/2022 under section 395, 327, 120-B, 417 r/w section 34 of I.P.C.

3. Accused No.4 has filed his first bail application after filing of the charge-sheet. According to him, he has not committed any offence. He is from poor farmer family. He has no connection with rest of the accused. There is delay of 13 days in lodging the F.I.R. The supplementary statement of the informant was recorded on 08/06/2022 and 15/09/2022 which is doubtful. The amount of dacoity is different in every statement of the informant. T.I. parade is not conducted. The informant has not confirmed about the exact amount alleged to have been kept in two different bags, which is suspicious. Nothing is on record from where such a huge alleged amount was collected. The informant has not mentioned the name of present accused. There is no evidence about conspiracy. C.C.T.V. footage of Kudal Railway Station has not been checked. The complaint and the police investigation is suspicious. Accused is the only bread earner of the family. Due to his jail custody, his family put to starvation. Hence, accused be released on bail.

4. The say of prosecution and Investigating Officer was called for. I.O. filed the say at Exh.13 and A.P.P. filed the say at Exh.14. It is their common contention that, accused is the offender on police record. He has criminal antecedents. He is resident of Sangli district but what is the reason for him to come in Kudal needs to be seen. Present accused has joined the hands with rest of the accused. Some of the accused are absconding. He is resident of Sangli District, so if he is released on bail, prosecution evidence

may get tamper. The amount of Rs.1,00,000/- is recovered from present accused. All the accused hatched the conspiracy and committed the offence. Hence, prosecution prayed to reject the bail.

5. Heard both sides. Perused relevant record.

6. It is argued by the learned counsel for the applicant/accused that, the role of present accused is not on record. The statements of passengers and also the statement of Yusuf is not recorded. T.I. parade is not conducted. C.C.T.V. footage is not collected. It further reveals from the record that amount of Rs.1,00,000/- was shown to be recovered from Saurabh Kambale but his statement has not been recorded. It is alleged that there is theft of Rs.42,00,000/- , but there is recovery of Rs.4,00,000/- to Rs.5,00,000/- only. All these things seems to be concocted. So also, one of the accused Nitin Pol has been released on bail. Hence, application be allowed.

7. Per contra, it is argued by learned A.P.P. that, the role of present accused is similar with the role of other accused. The application of Akshay Mohite, Nitin Jadhav are already rejected. The application of accused Nitin Pol was allowed, because he was found in Nepal at the time of incidence. The complaint has been immediately lodged on 26/05/2022. Hence, application be rejected.

8. After considering the rival submissions before Court when record is perused it reveals that, the offence is very much serious. So far as lacunae pointed out by learned defence counsel as

aforesaid are concerned, those can be taken into consideration at the time of trial. This is a pre-mature stage to comment in this regard. So far as difference in amount of dacoity is concerned, record reveals that supplementary statement of the informant has been recorded by the I.O. What has been recovered out of the dacoity amount, is not the point of consideration for bail application. Besides this, no doubt from the say of the prosecution it reveals that only one offence under section 324, 323, 504, 506 r/w 34 of I.P.C. has been registered against the present accused in Vita Police Station, but if the allegations are taken into consideration it reveals that, prosecution is alleging his involvement alongwith the accused, who are on police record. So also, fact cannot be overlooked that some of the accused are absconding and prosecution has prayed to commence the trial against them under section 299 of Cr.P.C. So far as no evidence against accused No.4 in respect of his presence in Kudal is concerned, at the risk of repetition it can be said that it is point to be taken into consideration at the time of trial and not at this juncture. From the prima facie evidence it reveals that, accused has criminal conspiracy while committing the offence. Hence, it is not just and proper to release him on bail. Hence, the order:-

ORDER

The application (Exh.10) stands rejected.

Sindhudurg
Date – 17/12/2022

(Smt. Sanika S. Joshi)
Addl. Sessions Judge,
Sindhudurg.