



**ORDER BELOW EXHIBIT 25**

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

1. This is an application filed by applicant/accused No.1 Akshay Uttam Mohite under section 439 of Cr.P.C.

2. Prosecution case in nutshell is as under:-

On 25/05/2022 informant was travelling from Ratnagiri to 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.42,04,000/-. According to prosecution, accused No.2 informed

accused No. 3 that, informant is carrying huge cash amount from Kochivalli express and all the accused conspired themselves to commit the offence. Hence, 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.1 has filed this bail application after filing of the charge-sheet. According to him, there is delay of 13 days in lodging the F.I.R. which shows that, allegations are false and made to harass the accused. Initially informant stated that, amount of Rs.2,00,000/- had been robbed. But, subsequently he stated that, amount of Rs.42,04,000/- had been robbed. This creates doubt about genuineness of the complaint. There is no single recovery from the present accused. Now investigation is complete. Charge-sheet is filed. Hence, no further detention of accused is warranted. After perusal of the charge-sheet it reveals that, Rs.4,00,000/- has been recovered from accused No.3 and Rs.1,00,000/- has been recovered from accused No. 4. But, no recovery is made from the present accused, which itself shows that accused is not involved in the present crime. The informant has not given particulars regarding Rs.42,04,000/-. Present accused is falsely implicated only on the ground that, he has similar criminal antecedents. Accused No.2 who hatched conspiracy, is already released on bail. So, on the ground of parity this accused is entitled for release. There is no direct or indirect evidence against the present accused about the commission of the crime. Accused has permanent resident and has landed property. So there is no question of absconding. Hence, accused prayed to release him on bail.

4. The say of prosecution and Investigating Officer was called for. I.O. filed the say at Exh.26 and A.P.P. filed the say at Exh.27. It is their common contention that, accused No.1 hatched conspiracy and committed the offence. The amount involved in the offence is Rs.42,00,000/-. Accused is habitual offender on police record. He has confessed that, he received amount of Rs.3,50,000/- which is yet to be recovered. He is from different district. So he is likely to abscond. He may commit similar type of 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 F.I.R. is lodged at belated stage i.e. after 13 days of the alleged incident. It is against unknown persons. No T.I. parade is conducted. The role of present accused is not on record. Accused is in jail since last 7 months. No recovery is made from the present accused. No C.D.R. S.D.R. details are on record. No CCTV footage of Kudal Railway Station is before the Court. So far as criminal antecedents of the accused is concerned, the offences registered against him are not grievous in nature. So also in some offences he is acquitted by the concerned Court. Now, charge-sheet is filed. Investigation is completed. Merely because accused is not from the same district is not a good ground to reject his bail application. Hence, he prayed to allow the application.

7. Per contra, it is argued by learned A.P.P. that, the present accused has important role in the commission of the offence. Certain amounts have been recovered from other accused. So far as releasing accused Nitin Pol is concerned, he was not

present even in India at the time of commission of the offence. This is not the case in respect of the present accused. So he is not entitled to claim the ground of parity. It is also argued that, accused is habitual offender. Hence, application be rejected.

8. In support of the contention the Ld. defence counsel has relied on the following orders :-

- i. *Sushil @ Chotu v/s. State of Maharashtra, Criminal Bail (BA) No. 175/2022.*
- ii. *Ayush s/o Naresh Meshram v/s. State of Maharashtra, Criminal Application (BA) No. 564/2022.*
- iii. *Dharmendra Singh v/s. The State of Madhya Pradesh, Petition for Special Leave to Appeal (Crl.) No (s). 1808/2021.*
- iv. *Maulana Mohd. Amir Rashadi v/s. State of U.P. & Anr., Criminal Appeal No. 159/2012.*
- v. *Fredric v/s. State of Punjab, Crl. Misc. NO. M-17417 of 2018.*
- vi. *Prashil s/o Sanjay Jadhav v/s. State of Maharashtra, Criminal Bail (BA) No. 1079/2022.*

9. In support of the contention the Ld. A.P.P. has relied on *Neeru Yadav v/s. State of Uttar Pradesh and Anr. 2015 AIR SCW 5416.*

I have studied all the citations for the purpose of considering the bail application.

10. Thus, in view of the argument advanced by Ld. defence counsel, when record is perused it reveals that, accused No.1 has major role in the commission of the offence. This is so

because, according to prosecution accused No.1 along with accused No. 3 boarded in the train and dragged the informant from the train at Kudal Railway Station in order to commit dacoity. From the prosecution allegations it reveals that, accused No.1 and 3 posing themselves to be a police and under the pretext of search forcefully dragged the informant from the train. Thus, accused No.1 and 3 seems to have played major role in the crime. Stealing the bags afterwards is not so difficult job. What was difficult was to drag the informant down from the train which has alleged to have done by the present accused. Thus, according to me the role of present accused is a major role. So far as delay in lodging the F.I.R., no recovery at the hands of the present accused is concerned, according to me these are not much important grounds to consider the bail application in favour of the present accused. From the record it reveals that, present accused is habitual offender. Grievous offences of similar type have been registered against him. No doubt in view of order of the Hon'ble High Court passed in *Moulana Mohd. Amir Rashdi v/s. State of U.P. & Anr.*, the bail application cannot be rejected on this ground. But, the bail application is not rejected on this sole ground only. The role of the accused in this case is taken into consideration. The order relied upon (supra) also observes the same. Hence, with due respect I say that, the said citation is not applicable to the present facts and circumstances of the case. In that regard, I am also guided by *Neeru Yadav v/s. State of Uttar Pradesh and Anr. 2015 AIR SCW 5416*.

11. Besides this, even though it is vehemently argued by Ld. defence counsel that, out of the offences registered against the present accused he is acquitted from the some of the offences. He

has filed list of three regular criminal cases against accused under Exh.30 in which he has been acquitted by the Ld. J.M.F.C. Courts. But, if the judgment of the said criminal cases is taken into consideration it reveals that, due to compromise between the parties out of the Court, no incriminating evidence was found against accused and therefore he has been acquitted from the respective offences. Thus, it can't be said that, the said judgments are on merit in true sense. Therefore, these judgments are not helpful to the defence.

12. The Ld. defence counsel has also relied upon *Sushil @ Chotu v/s. State of Maharashtra, Criminal Bail (BA) No. 175/2022*, and argued that, if there is no explanation for delay in lodging the F.I.R., accused is entitled for bail. I have also studied the said order. But, after perusal of this order it reveals that, this is one of the ground observed by the Hon'ble High Court to release the accused on bail. But, this is not the position before me and therefore with due respect I say that, the said order is not applicable to the present facts and circumstances of the case.

13. Another order relied upon by the Ld. defence counsel is *Ayush s/o Naresh Meshram v/s. State of Maharashtra, Criminal Application (BA) No. 564/2022*, in which it is held that, there is no prima facie record which disclosed the name of the applicant about his involvement in the crime and therefore on this basis and with some other reasons the applicant was released on bail. But, the facts in the present case do not match with the said order.

14. The next order relied upon by the defence is, *Fredric v/s. State of Punjab, Crl. Misc. NO. M-17417 of 2018*, in which it is

held that, merely because accused is of foreign origin, bail application cannot be rejected when there is no prima facie case made out against the accused. But, again with due respect I say that, this is not the position here. The role of the accused seems to be major one. So also, his bail application is not rejected on the ground that he is from another district. Hence, with due respect I say that, the facts in the present case do not match with the said order.

15. So far as point of T.I. parade is concerned, from the record it reveals that, the same has not been conducted, but lethargy of the I.O. in investigation cannot be a ground for the accused to get release on bail. Hence, argument in that regard cannot be looked into. So far as argument about mentioning of robbed amount up to Rs.2,00,000/- at the first instance and mentioning of robbed amount up to Rs.42,04,000/- afterwards is concerned, from the record it reveals that, the reason behind the same has been mentioned by the informant in his supplementary statement. So that point cannot be looked into. It is also necessary to be mentioned here that, accused has been externed for one year, besides various registration of the offences of similar nature. Thus, on the background of these facts, if present accused is released on the bail, he may tamper the prosecution evidence. He may pressurize the witnesses. Hence, it is not just and proper to release the present accused on bail. Hence, the order:-

**ORDER**

The application (Exh.25) stands rejected.

**Sindhudurg**  
**Date – 12/04/2023**

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