



ORDER BELOW EXHIBIT 47

(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 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.1 has filed his second bail application after filing of the charge-sheet. According to him, he has not committed any offence. There is delay of 13 days in lodging the F.I.R. Nothing has been recovered from this accused. No T.I. parade was conducted. Applicant is in jail since last one year. Accused No. 2, who alleged to have hatch the conspiracy, is released on bail. So, on the ground of parity, this accused is also entitled for bail. Hence, application be allowed.

4. The say of prosecution and Investigating Officer was called for. I.O. filed the say at Exh.49 and A.P.P. filed the say at Exh.50. It is their common contention that, offence is serious. Accused is the offender on police record. He has criminal antecedents. He confessed about getting theft amount to the extent of Rs.3,50,000/-, but it has not been recovered yet. Accused 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. 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. The charge-sheet is filed. Accused is behind the bar for more than one year. There is delay of 13

days in lodging the F.I.R. which shows that, allegations are false. Accused No. 2 alleged to have hatched the conspiracy is released on bail. So, on the ground of parity, present accused is entitled for bail. It is also argued that, even though various offences are registered against the accused, in 2-3 offences he is acquitted. So also, in view of citation *Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr., Criminal Appeal No. 159/2012, (S.C.)*, bail application of the accused can't be rejected. Hence, application be allowed.

7. The learned defence counsel has relied upon the following citations -

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

I have studied all the citations.

8. 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 accused Nitin Pol was allowed, because he was found in Nepal at the time of incident. The complaint has been immediately lodged on 26/05/2022. Hence, application be rejected.

9. After considering the rival submissions before Court when record is perused it reveals that, the charge-sheet is filed long back, but there is no progress in the prosecution case as muddemal is awaiting. So also, from the record it reveals that, accused is behind the bar since last one year. It is rightly pointed out by Ld. defence counsel that, no CDR/SDR are on record to connect the accused with crime. No T.I. parade is conducted. So, in view of citation *Maulana Mohd. Amir Rashadi* (cited supra), bail application of the accused cannot be rejected. Furthermore, Ld. defence counsel has produced judgment of three criminal cases vide Exh.51 which shows that, accused has been acquitted from these three crimes. Therefore, this point is not the hurdle for the accused. Besides this, from the record it reveals that, there are less chances of immediate trial. Hence, accused cannot be kept behind the bar for indefinite period. Hence, it is just and proper to release the accused on bail. Resulting effect is :-

ORDER

- 1) The application is allowed.
- 2) Applicant/accused No. 1, Akshay Uttam Mohite, be released on bail in Kudal Police Station C. R. No. 106/2022 under Sections 395, 327, 417, 170, 120-B r/w. 34 of Indian Penal Code, on his executing P.R. Bond of Rs.50,000/- with one solvent surety in the like amount on following conditions:-

- A) The applicant/accused shall not contact any of the witness by any means and shall not tamper them, till conclusion of trial.
 - B) Applicant/accused shall furnish update address and mobile numbers of his two close relatives.
 - C) Applicant/accused shall furnish his address with documentary proof and shall inform the Court and I.O. in respect of change of his address.
- 3) The breach of any of the condition will lead to cancellation of bail.

Sindhudurg
Date – 04/07/2023

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