



**ORDER BELOW EXHIBIT 59**

( State of Maharashtra Vs. Akshay Uttam Mohite etc.6 )

1. This is an application filed by applicant/accused No. 3, Nitin Pandurang Jadhav, 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.61 and A.P.P. filed the say at Exh.62. It is their common contention that, offence is serious. Accused is the offender on police record. He has criminal antecedents. He confessed about commission of the offence and amount of Rs.4,00,000/- has been recovered from him under recovery panchanama. 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, there is 13 days delay in lodging the F.I.R. No explanation of delay has been given by the prosecution. Now charge-sheet is filed. Investigation is completed. Therefore, further detention of applicant is

unwarranted. Even though applicant has criminal antecedents, in view of ratio laid down in *Maulana Mohd. Rashadi Vs. State of U.P. and Anr., 2015 AIR SCW 5416*, his bail application cannot be rejected unless and until his specific role in this crime has been brought on record. The complainant has never stated the description of present accused to anybody. Even though he alleges that, he was taken outside by present applicant. Even the co-passenger never disclosed description of present accused to anybody. The statement of co-passenger is also not recorded. No T.I. parade was conducted. Hence, personal liberty of present accused cannot be curtailed. 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, present accused is the offender on police record. Various offences are registered against him. He is resident of Sangli. Externment proceeding was also commenced against him. Amount of Rs.4,00,000/- has been recovered from him. So, if he is released on bail, there may be a danger to the complainant and his witnesses. Hence, application be rejected.

9. After considering the rival submissions when record is perused it reveals that, the charge-sheet is filed long back. Accused is behind the bar since last one year. No T. I. Parade is conducted. Even though it is pointed out by the prosecution that, accused is offender on police record and various cases are registered against him, the Ld. defence counsel has produced judgments of criminal cases vide Exh. 51, which shows that, accused has been acquitted from three cases. Besides this, it is rightly pointed out by Ld. defence counsel that, the role of accused in the present case is important. Even though prosecution alleges that, he took out the complainant outside the train. The complainant has not given his description. Even statement of co-passenger is also not recorded to gather the description of present accused. Furthermore, now charge-sheet is filed. The investigation is almost completed. Nothing has remained to be recovered from the accused. Accused is in jail since last one year. No chances of immediate trial. Hence, it is not just and proper to keep the accused 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. 3, Nitin Pandurang Jadhav, 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 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 – 28/07/2023**

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