

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WASHIM.

**S.T. No.11/2024
Omkar & Ors Vs. State**

Common Order below Exh.4 & 6

(Passed on 13/03/2024)

Applicants/accused have filed these applications for bail under Sec.439 of Cr.P.C. Perused the application and say filed by Ld. APP Heard Ld. advocates for the accused and Ld. APP

2] The accused are facing trial for the offence punishable under Sections 394, 395 r/w 34 of the Indian Penal Code.

3] Ld. advocate for accused submitted that first bail application of applicant/ accused Omkar Raut and Rahul Karwate was rejected only on the ground that investigation is in progress and for TI parade presence of applicant/accused is necessary. They submitted that now the investigation is completed and charge-sheet is filed. Therefore, it amount to change in circumstances. Hence, second bail application is maintainable.

4] Ld. advocate for applicant submitted that FIR is lodged against unknown person. No document is filed alongwith charge-sheet showing that I.O. has conducted TI parade of the accused persons. Therefore, there is no evidence on record to show that informant and other material witnesses identified the applicant/accused being culprit. They submitted that there is no recovery of any incriminating article from the possession of applicant/accused Omkar Raut and Rahul Karwate. Ld. advocate appearing for applicant/accused Manish Bhojar submitted that only cash of Rs.2500/- recovered from him. They submitted that considering the material of record the applicant/accused are entitled to be released on bail.

5] On the other hand Ld. APP submitted that in memorandum statement of co-accused Ramdas he has taken the name of applicant/accused and as per memorandum statement of Ramdas 810 kg wheat is recovered. She submitted that as per memorandum statement of accused Manish Bhoyar Rs.2500/- is recovered. She submitted that this evidence is prima-facie sufficient to link the accused with the crime. She submitted that if the accused are released on bail then they will tamper the evidence of prosecution. On these grounds she prayed that application be rejected.

6] The FIR is lodged against unknown person. The first bail application of accused Omkar Raut and Rahul Karwate was rejected on the ground that investigation was in progress and for TI parade presence of said accused is necessary. After filing charge-sheet Ld. Advocate for accused has right to go through entire case paper that is charge-sheet, which was not available to accused or his advocate while arguing bail application prior to filing of charge-sheet. Therefore, after filing of charge-sheet there is change in circumstances. Hence, the second bail petition is maintainable.

7] As I have already mentioned that FIR was lodged against unknown person and first bail application was rejected only in order to give opportunity to investigation officer to conduct TI parade, however in spite of it investigation officer has not taken pain to conduct TI parade and fact remains that no TI parade is conducted. Therefore, prima-facie there is no evidence on record to show that material witnesses like informant Chainingh Tawar and cleaner Jaypalsing had identified the applicant/accused as a culprits.

8] No incriminating article is recovered from accused Omkar Raut and Rahul Karwate. Cash of Rs.2500/- recovered on the basis of

memorandum statement of accused Manish Bhoyar. Prima-facie said evidence is not sufficient to reject his bail application because the cost of wheat which was stolen is shown in FIR Rs.48052/-. The memorandum of statement of co-accused Ramdas is also not sufficient to reject the bail application. For the above reasons I conclude that the applicant/accused are entitled to be released on bail. Hence, I pass following order.

ORDER

- 1] Application is allowed.
- 2] Applicant/accused No.1 Omkar Namdev Raut, No.2 Manish Ramhari Bhoyar & No.3 Rahul Gajanan Karwate shall be released on bail, on their executing P. R. bond of Rs.50,000/- each with surety in the like amount, in Crime No.532/2023 for the offence punishable under Section 394, 395 r/w 34 of the Indian Penal Code, registered with Police Station Washim Gramin.
- 3] Applicant/accused no.1 to 3 are hereby directed not to pressurize the witnesses and not to tamper the prosecution evidence.
- 4] Hamdast granted.

Date : 13/03/2024

(N. R. Pradhan)
Additional Sessions Judge,
Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.K.Pawar, Stenographer (Grade-I)

Name of Court :- District Judge-1 & Additional Sessions Judge, Washim.

Date of Judgment/ Order :- 13/03/2024

Judgment/Order signed by :- 13/03/2024
the Presiding Officer on

Judgment/Order uploaded on :- 14/03/2024