

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

**CRIMINAL APPLICATION NO. 3085 OF 2015.
WITH
CRIMINAL APPLICATION NO.2190/2015.**

**CRIMINAL APPLICATION NO.
3085 OF 2015.**

**CRIMINAL APPLICATION
NO.2190/2015.**

SAYABU @ SAHEBRAO S/O BABU
METKAR
VERSUS.
THE STATE OF MAHARASHTRA.

PAKHARU SITARAM GORE.
VERSUS.
THE STATE OF MAHARASHTRA.

Appearance =>

Mr. Ramraje P. Magar, Advocate for the Applicant in Criminal Application No.3085 Of 2015.

Mr. Harshad Padalkar, Advocate for the Applicant in Criminal Application No.2190 Of 2015.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 23rd June, 2015.

Per Court :-

These two Criminal Applications are filed by the Applicant - Sayabu @ Sahebrao s/o Babu Metkar (Applicant in Criminal Application No.3085 Of 2015.) and Pakharu Sitaram Gore (Applicant in Criminal Application No.2190 Of 2015.) for grant of regular bail, in connection with CR No. I 149/2012 registered with Karmad Police

Station, District – Aurangabad, for the offences punishable under Section/s 395 and 341 of the Indian Penal Code. [These two Criminal Application can be decided by the common order.]

[2] Heard Mr. Ramraje P. Magar, learned counsel for the Applicant in Criminal Application No.3085 Of 2015, Mr. Harshad Padalkar, learned counsel for the Applicant in Criminal Application No.2190 Of 2015 and Mr. A.S. Shinde, learned Additional Public Prosecutor for the State of Maharashtra.

[3] Investigating agency has already completed the entire investigation and charge-sheet is already filed before the Court. The date of incident is 27th October, 2012. According to the First Information Report filed by the First Informant – Dagadu Chandrabhan Pache when he was proceedings towards Gadhewadgaon on his Hero Honda Motorcycle bearing registration No. MH/28/M/3584 alongwith his friend – Sunil, they were intercepted near village Golatgaon by six persons, who were having masks on their faces. According to the allegations made in the First Information Report, those six persons took away Rs.500/- kept in the pant of Sunil; also his mobile handset was taken. Likewise, mobile handset of first informant was also taken away and Hero Honda Motorcycle bearing registration No. MH/28/M/3584 was also taken away.

[4] The learned counsel for the Applicants submitted that no Identification Parade is held in the present prosecution case. Said fact is confirmed by the learned Additional Public Prosecutor. However, on

that, nothing turns in favour of the present Applicants, for the simple reason that, even according to the First Information Report, at the time of incident, assailants masked their faces.

[5] The learned counsel for the Applicants submitted that there is no incriminating material against the present Applicants. In so far as Applicant - Pakharu Sitaram Gore (Applicant in Criminal Application No.2190 Of 2015.) is concerned the only incriminating material is his memorandum statement recorded on 26th December, 2012 by which it is alleged that Pakharu Sitaram Gore agreed to show the place from where the motorcycle is seized.

[6] Curious enough, motorcycle was already seized by the Investigating Officer on 28/10/2012 from the very same place. Thus, the Investigating Officer was already in know of the place. The Applicant as alleged to have discovered the fact which is already known to the Investigating Officer. Thus, it cannot be said to be discovery at the instance of Applicant – Pakharu. Except this material, there is no incriminating material against the Pakharu Sitaram Gore (Applicant in Criminal Application No.2190 Of 2015.).

[7] In so far as Sayabu @ Sahebrao s/o Babu Metkar (Applicant in Criminal Application No.3085 Of 2015.) is concerned, in the entire charge sheet, there is no material against him. No recovery is made at the instance of present Applicant/s.

[8] Mr. A.S. Shinde, learned Additional Public Prosecutor submitted that one Crime No.149/12 is registered against both the

Applicants. The learned counsel for the Applicants has placed on record the copy of order passed by the learned Sessions Judge, Nanded, who has already granted the bail in favour of present Applicants on 10/01/2013.

[9] Present Applicants are behind the bar in connection with present Crime since 23rd December, 2012. The Applicants are languishing in jail in the present case; where-in there is no legal evidence available against them in the entire charge-sheet, at least prima facie.

[10] In that view of the matter, their further custodial presence in jail is not required. Both the Applicants are claiming that they are resident of Nanded, District Nanded. That leads me to pass the following order :-

ORDER

(i) Criminal Application No.3085 Of 2015 is allowed.

(ii) Criminal Application No.2190 Of 2015 is allowed.

(iii) Applicant - Sayabu @ Sahebrao s/o Babu Metkar (Applicant in Criminal Application No.3085 Of 2015.) and Pakharu Sitaram Gore (Applicant in Criminal Application No.2190 Of 2015 shall be released on regular bail on they executing P.R. Bond of Rs. 50,000/- [Rs. Fifty Thousand.] each with one solvent surety in the like amount, in connection with CR No. I 149/2012 registered with Karmad Police Station, District – Aurangabad, for the

offences punishable under Section/s 395 and 341 of the Indian Penal Code.

(iv) Bail before trial court.

(v) Applicant/s - Sayabu @ Sahebrao s/o Babu Metkar and Pakharu Sitaram Gore shall attend the Police Station, Karmad, District - Aurangabad once in a fortnight, preferably on every Sunday between 3.00 p.m to 5.00 p.m.

(vi) The Applicants are further directed to attend Police Station, Bhagyanagar, Nanded, District – Nanded once in a week, preferably on every Tuesday and shall remain present in said Police Station between 3.00 p.m to 5.00 p.m, till trial is over.

(vii) In case of breach of condition in attending either Police Station, Karmad, District - Aurangabad or Police Station, Bhagyanagar, Nanded, District – Nanded, as directed above, the Investigating Officer will be at liberty to move before this court, for cancellation of their bail.

(viii) With this Criminal Applications are allowed and same are disposed of, accordingly.

(V.M. DESHPANDE, J.)