

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**921 CRIMINAL APPLICATION NO. 4275 OF 2016
WITH
APPLN/4775/2016
IN
APPLN/4275/2016**

VIJAY S/O KASHINATH GOSAVI

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. R.R.Karpe, Advocate for Applicant.

Mr. S.J.Salgare, A.P.P. for Resp. – State.

Mr. S.T.Shelke, Advocate for informant.

.....

CORAM : A.M.BADAR, J.

DATE : 22nd SEPTEMBER, 2016

.....

PER COURT :

1. The applicant/accused in Crime No. 180/2015 registered at Akole police station, Tq. Akole, Dist. Ahmednagar for the offences punishable u/ss 395,342,120-B,412 of the Indian Penal Code, by this application is praying for releasing him on bail after filing of the charge sheet.

2. Heard the learned counsel for the applicant. He

argued that there is no tangible evidence to connect the applicant with the crime in question and, therefore, his pre-trial detention is not warranted.

3. The learned A.P.P. as well as the learned counsel for the informant opposed the application by contending that the applicant and co-accused Gorakh Bhaurao Waghchaure are master-mind in committing the crime in question. They conspired and planned the dacoity, in which the informant and the members of his house were robbed of their money and valuables to the tune of ₹ 4,39,500/-. The learned A.P.P. submitted that the statement of co-accused Kadam Popat Chavan and phone calls exchanged between accused Gorakh Waghchaure and the present applicant connects the applicant with the crime in question.

4. Perused the charge sheet. The F.I.R. is lodged by Dattatraya @ Pappu Ramnath Wakchaure on 16/12/2015. In the night intervening 15/12/2015 and 16/12/2015, about 8 persons actively participated in the dacoity in question. According to the prosecution case, some others were master-mind behind this dacoity. The incident, according to the prosecution case, occurred because there was conversation between the informant and co-accused Gorakh Waghchaure, as well as co-accused Gorakh Waghchaure and his friend Vijay managed the incident of dacoity taking the service of co-accused.

5. So far as the statement of co-accused is

concerned, this Court can not look into the same being the confession made before the police officer and, therefore, inadmissible in view of the provisions of Sections 24,25 and 26 of the Evidence Act. Even, according to the prosecution case, co-accused Gorakh and applicant Vijay are friends and, therefore, phone calls exchanged between them even on the day of incident can not be given such over-bearing importance to deny liberty to the applicant. Hence, the following order.

(i) The application is allowed.

(ii) The applicant Vijay s/o Kashinath Gosavi in Crime No. 180/2015 registered at Akole police station, Tq. Akole, Dist. Ahmednagar for the offence punishable u/ss 395,342,120-B,412 of the Indian Penal Code be released on bail on executing P.R. Bond of Rs. 25,000/- [Rupees Twenty Five Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall not indulge in repeating the similar offence in future.

(vi) The applicant shall co-operate the trial Court in the expeditious disposal of the trial against him.

[A.M.BADAR, J.]

KNP/Cr.Apln. 4275.2016