

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1032 OF 2017

Ankush s/o. Rajendra Kale & Anr.

....Applicants.

Versus

The State of Maharashtra

....Respondent.

Mr. Swapnil S. Rath, Advocate for applicants.

Mr. S.J. Salgare, APP for respondent.

CORAM : T.V. NALAWADE, J.

DATED : March 21, 2017.

ORDER :

1. The application is filed for bail in C.R. No. 25/2016 registered in Manwat Police Station, District Parbhani for the offences punishable under sections 397, 302 etc. of Indian Penal Code. Both the sides are heard.

2. It appears that in the incident, which took place on the night between 2.2.2016 and 3.2.2016, at two places the incidents of dacoity took place and three murders were committed. For these offences, one crime is registered on the basis of report given by one Bhaurao Fulpagare. His report shows that on that night three persons had come to his residential place and they were holding weapons like axes. They were there

to rob them and under threat, they asked him to produce valuables including money. As the family of complainant is poor, they could not give valuables or money and then the dacoits assaulted the members of the family of complainant by using axes. The complainant had virtually scuffle with one of the accused and then the other man, accused gave blow of axe. When he returned he noticed that his father was dead due to the assault made on him. He had actually come across with three persons. But, in supplementary statement, he stated that there were more than three persons, who had taken part in the dacoity. In the F.I.R. itself, the complainant stated that he can identify the persons, if they are shown to him. Present applicants were arrested on 7.6.2016. It appears that police showed the persons to the complainant on 9.6.2016 in police station and the complainant identified the persons, who were seen by him on that night.

3. The learned counsel for applicants submitted that test identification parade was not held and the material of aforesaid nature can be of no use to the prosecution if the case is tried against the applicants. This submission is not at all acceptable. The Court cannot reject the evidence of identification given by the witnesses in Court only because test

identification parade was not arranged and held. Three murders were committed on that night and there are statements of many witnesses of aforesaid nature. The circumstance that nothing was recovered from the present accused or under section 27 of the Evidence Act at the instance of present applicants cannot help the applicants at this stage. The material available at present against the applicants needs to be considered by this Court and the material shows that witnesses are saying that they can identify the persons, who had taken part in the dacoity. The learned APP submitted that terror was created and there is still fear in the minds of the persons who faced that terror on that night and the persons may not be in a position even to go for test identification parade in the jail. Such possibility cannot be ruled out as three murders were committed on that night and brutal attack was made even on old persons of the family by these persons. Such incidents are increasing day by day. The discrepancy in the material or late giving of the statements cannot be considered at this stage. This Court holds that the material is sufficient to make out prima facie case for the aforesaid offences.

4. The submissions made by the learned APP show that as against present applicant Ankush as many as four crimes

were registered from the year 2007 and two of them are for the offences punishable under sections 397, 302, 392 etc. of Indian Penal Code and as against applicant Arjun two offences were registered. Under section 379 of Indian Penal Code one offence is registered and other offence was registered under section 399 and 402 of Indian Penal Code.

5. In view of the nature of allegations and seriousness of the offences, this Court holds that there is possibility of tampering with the prosecution witnesses and there is possibility of absconding of the applicants if they are released on bail. In such a case, bail cannot be granted and only the case can be expedited. The submissions made show that recording of the evidence will start on 4.4.2017. This Court expects that trial is expedited. The application stands rejected. These observations are for the purpose of present proceeding only.

[T.V. NALAWADE, J.]

ssc/