

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.109 OF 2017

Shir Vikas Vasant Gund @ Nikam ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.G.R. Agrawal for the Applicant
Mr.Rajan Salvi, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 20, 2017

P.C. :

1. This application is moved for bail by the applicant/accused under section 439 of the Code of Criminal Procedure. He alongwith the co-accused is facing charges under section 395 of the Indian Penal Code. The incident has taken place on 29.4.2016 on Pune Satara highway near hotel Samrat after Karad. The incident took place on the night intervening between 28.4.2016 and 29.4.2016. The complainant Gopal Ram Thakur alongwith his family was proceeding from Mohpada Rasayani, District Raigad to Kolhapur for a wedding of his nephew. At around 12.30am, the driver stopped the car and at that time, two persons from behind

and two persons from the front side gheraoed his car and one person at the point of knife and sword, asked the complainant to hand over all the valuables and the complainant and his family members gave them the ornaments, cash, cell phone. One of the persons forcibly took away the gold bangles and ornaments and gold rings on the person of the wife. Thus, the complainant and his family were robbed of articles valued at Rs.5,51,000/-. Therefore, Gopal Ram Thakur approached the police on the same night and the offence was registered at C.R. No.131 of 2016 with the Karad Taluka police station. The applicant/accused was arrested on 6.5.2016. Hence, this Bail Application.

2. The learned Counsel for the applicant/accused submitted that it is not dacoity under section 395 as five persons were not involved in the offence. He further submitted that there is some evidence against the applicant-accused, however, he is in prison since last 11 months. He has no criminal antecedents. He further submitted that if it is a robbery, then, the offence is of a lesser degree where the punishment is also less.

3. Learned Prosecutor while opposing this Bail Application, has pointed out that there was a recovery of ornaments, i.e., the ear

tops, cell phone of the complainant on 7.5.2016, i.e., on the next day of the arrest. The learned Prosecutor further submitted that the Test Identification Parade was conducted on 27.5.2016 and in the Test Identification Parade, the complainant Gopal Ram Thakur and his wife Ashwini Thakur have identified the applicant/accused. The learned Prosecutor has submitted that as per the statement of the wife of the complainant, at the time of the incident, the offence was committed by 5 persons at the point of knife and sword. He submitted that it is a case of dacoity and he further argued that even if it is a case of robbery, the punishment is of 10 years.

4. Perused the FIR, the statements of the witnesses. Perused the Test Identification Parade and considered the submissions of the learned Prosecutor. Though the incident has taken place at 12.30 a.m., i.e., at the midnight, the ornaments i.e., ear tops and cell phone were recovered from the applicant/accused. It appears that some ornaments were also recovered from the co-accused.

5. Considering all the evidence, the Bail Application is rejected.

6. The learned trial Judge to expedite the trial.

(MRIDULA BHATKAR, J.)