

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

BAIL APPLICATION NO.1005 OF 2016

Ambadas Rama Shinde	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**with
BAIL APPLICATION NO.1163 OF 2016**

Prakash Gajanan Patil	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Ms.Anjali Patil for the Applicant in BA/1005/2016
Mr.Prashant Aher with S.P. Banerjee i/b J.J. Omprakash for
Applicant in BA/1163/2016
Ms.S.S. Kaushik, APP, for State in BA/1005/2016
Ms.Rutuja Ambekar, APP, for Respondent – State in BA/1163/2016
Mr.R.T. Chalke, PI, Juhu police station, Mumbai – present

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 7, 2017**

P.C. :

1. These two applications are heard and decided together as the applicants/accused are facing the same charges under sections 342, 397, 395 r/w section 120B of the Indian Penal Code in C.R. No.292 of 2015 with Juhu Police Station. It is the case of the prosecution that one Harishchandra Mishra alongwith his associates, who was residing in bungalow No.807 at Royal Turner

Lane, Juhu, Mumbai. During the night intervening between 30.7.2015 and 31.7.2015, at around 2 a.m., he heard the noise of barking dogs. He found his two servants were sitting on the floor and six persons armed with sickles assaulted the complainant and also made him to sit. They tied hands of the servants and the complainant and thereafter they committed robbery in the house of cash, cellphones, gold chain, wrist watches, DVR, etc. valued at Rs.2,23,000/-. Thereafter, on the next day, the complainant approached the police and the offence was registered against six unknown persons. During the course of investigation, the police arrested both the applicants/accused on 15.8.2015 and hence, these Bail Applications.

2. The learned Counsel for the applicants/accused submitted that the applicants/accused are innocent and have not committed any offence and they are in prison since 15.8.2015. The learned Counsel for the applicant/accused Ambadas Rama Shinde has submitted that the said applicant/accused was not put to the test identification parade but there is one sickle and cash of Rs.6,000/- which were recovered at his instance in a recovery panchanama conducted on 17.8.2017. She further submitted that besides this,

there are three antecedents against the said applicant/accused. However, he has been acquitted in them.

3. The learned Counsel for the applicant/accused Prakash Patil has submitted that the applicant/accused was put through in the test identification parade and he was identified by the complainant. However, it cannot be believed as there is a discrepancy in the age. The learned Counsel further submitted that a mobile phone of one Spice company and sickle were recovered at the instance of the applicant/accused on 18.8.2015. He further submitted that besides this, there is no evidence against the applicant/accused. The applicant/accused has no criminal antecedent.

4. Learned Prosecutors have opposed these applications and have submitted that these applicants/accused are very much involved in this offence. There is a recovery of weapon i.e., sickle from both the accused. It is submitted that the applicant/accused Ambadas Shinde is having antecedents as under:

- i) C.R. No.509 of 1996 registered with Dindoshi Police Station;
- ii) C.R. No.344 of 2013 registered with Malad Police Station, under sections 399 of the Indian Penal Code; and

iii) C.R. No.22 of 2007 registered with MHB Colony Police Station, under sections 454, 457 of the Indian Penal Code.

5. It is further submitted by the learned Prosecutor arguing against accused Prakash Patil that this applicant/accused was put through in the test identification parade which was conducted on 27.11.2015 and the complainant and eye witness both have identified the applicant/accused. It is further submitted by the learned Prosecutors that the police have collected the record of call details of their respective cellphones which record discloses that the applicants/accused and other co-accused are closely related and they were having continuous communication during the period of offence. Hence, their Bail Applications are to be rejected.

6. Perused the FIR and the papers before the Court. The test identification parade shows that the complainant has identified the applicant/accused Prakash Patil. However, the age of Prakash Patil is 57 years and in the complaint against unknown persons, who committed dacoity, it was mentioned as 25 to 30 years. There is a recovery of sickle and Spice company mobile from Prakash Patil. On 15.8.2015, the list given by the complainant shows that

no cellphone of Spice company was robbed. There are no antecedents against Prakash Patil.

7. In the case of Ambadas Shinde, there is no evidence of test identification parade against him. The sickle and recovery of Rs.6,000/- is shown against him under the recovery panchanama. It is shown that he was involved in three cases. However, as per the submissions of the learned Counsel for the applicants/accused he was acquitted from two cases and one case is pending against him i.e., C.R. No.344 of 2013 i.e., under section 399 of the Indian Penal Code.

8. Thus, considering the evidence before the Court against the applicants/accused. I allow these applications on the following terms:

- a) The applicants-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- each, with one or two solvent sureties in the like amount;
- c) The applicants-accused shall not tamper with the evidence or pressurise the complainant;

d) The applicants-accused shall not indulge into any criminal activity and shall not associate themselves with the other accused;

e) The applicants/accused shall attend all the Court dates.

f) The applicants-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address so also the temporary address and address of his native place to the Investigating Officer alongwith documentary proof of his address.

g) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

9. Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)