

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1484 OF 2016

Jishan alias Saddam Ishtiyak Khan ... Applicant
Vs.
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 906 OF 2016**

Fidavaris Mohammed Salim ... Applicant
Vs.
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 1692 OF 2016**

Aamir Mohammad Hasib Khan ... Applicant
Vs.
The State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 1966 OF 2016**

Gyankumar Prabhudayal Pande ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. A.P. Mundargi, Senior Advocate a/w. Mr. Zameer Inamdar i/b. Mr. Subir Sarkar for the applicant in BA/1484/2016.
Mr. O.A. Siddiqui a/w. Mr. Kamran Shaikh, Advocate for the applicants in BA/906/2016 and BA/1966/2016.
Mr. Chetan S. Damre, Advocate for the applicant in BA/1692/2016.
Mr. Y.M. Nakhawa, APP for the State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 17th February, 2017.

P.C.:

As all the applicants/accused are prosecuted in same C.R.,

these Bail Applications are heard together and disposed by finally.

2. The applicants/accused are prosecuted for the offences punishable under sections 395, 342, 170, 120B of the Indian Penal Code, sections 3, 25 of Arms Act and under section 37(1) and 135 of Bombay Police Act in C.R. No. I-40 of 2015 at Vadivarhe Police Station, District Nashik. The offence is registered at the instance of Sameer Manwar Pinjari on 24th April, 2015.

3. It is the case of the prosecution that the complainant was working as supervisor in Sequel Logistics Company at M.I.D.C. The said company was in the business of transportation of valuables. On 23rd April, 2015 at night when he was on duty, he was informed that he was deputed to give delivery of 60 gold biscuits of one kg. each to Shirpur Gold Refinery at Dhule. So he alongwith the driver, two gunmen left the officer at 11.15 p.m. on 23rd April, 2015. As they reached at Vadivarhe at Mumbai-Agra Road in Nashik District at 3 a.m., one white colour logan car with umber red lamp followed their car and suddenly had stopped their car. Nearly 5 persons in the car got down. They disclosed that they were police people and they wanted to take search of the car as they received information that the

complainant and other persons were carrying stolen property. The persons entered the car and at the point of pistol, they took keys of the safe box. They assaulted the persons in the car and took away the car to some distance. They asked the complainant and other persons to get down and tied their hands and legs and took away 58 gold biscuits of 1 kg. each but left two biscuits in the car. It is the case of the complainant that each biscuit weighing 1 kg. was having trade mark and batch no. of the company. Thus, the complainant and his associates were robbed of Rs.15,71,06,000/-. After registration of the offence, the police started investigation. Applicant/accused Jishan was arrested on 27th June, 2015 by Thane police in C.R. No. 149 of 2015 in a case of robbery. During interrogation, they found his involvement in the present crime and thereafter the applicant/accused Jishan was taken in custody on 1st August, 2015. The applicant/accused Aamir was arrested on 27th October, 2015 and applicants/accused Fidavaris and Gyankumar was arrested on 29th April, 2015 by the police and since then they are in prison. Hence, these Bail Applications.

4. The learned senior counsel Mr. Mundargi appearing for applicant Jishan Khan in Bail Application No. 1484 of 2016, has

submitted that the applicant/accused is innocent and he has not committed any offence of robbery. The applicant/accused Jishan is taken in custody on suspicion. He submitted that the evidence against the applicant/accused is not sufficient to prove guilt of the applicant/accused. The learned senior counsel has submitted that the applicant/accused was identified by the complainant Sameer and one Praveen Dubey in Test Identification Parade, which was conducted on 22nd September, 2015. He pointed out that the contents in the memorandum of Test Identification Parade disclosing that Sameer identified applicant Jishan who was standing at No. 4 and Praveen identified the accused who was standing at No. 5 is incorrect when the Test Identification Parade charts showing the placement of the dummies and accused are tallied. He further pointed out that prosecution has relied on so called recovery panchnama dated 27th July, 2015. However, in the said panchnama, the recovery of 10 biscuits of 1 kg. each so also GC notes were found at the instance of applicant/accused Jishan but the gold was recovered in row house no. 96 where one co-accused Ayesha was residing and was owned by her. The house of the accused is no. 97 as it is mentioned in the said panchnama and thus, nothing was recovered from the applicant/accused. Thus, there is no recovery of

gold from the accused. Under such circumstances, the applicant/accused is entitled to bail.

5. Learned APP has strongly opposed the Bail Application of applicant/accused Jishan. He submitted that applicant/accused Jishan was identified by the complainant and Praveen Dubey on 22nd September, 2015. The evidence of Test Identification Parade cannot be disbelieved at this stage. He further submitted that the police have recovered 10 gold bricks of 1 kg. Each and cash of Rs.12,50,000/- from row house no. 96, however, row house of applicant Jishan was adjacent to the said house and recovery was made and police took search on the basis of clues they got from the investigation. The gold biscuits/bricks which were recovered were with the same trademark and batch number. He submitted that applicant/accused Jishan has purchased the house at Salempur out of the money which he got after selling those gold bricks. He further submitted that the applicant/accused Jishan was arrested in C.R. No. 249 of 2015 when he committed a robbery of the similar type. He further submitted that still all the gold bricks are not recovered and some accused are absconding. Considering this evidence and the criminal record of the applicant Jishan, he is not to be granted bail.

6. Perused the memorandum of test identification parade. There is variance in the memorandum of test identification parade in respect of placement of the accused and dummies, as No. 4 and 5 are confused in respect of witnesses, however, it can be a human error. It is to be noted that the faces of the accused persons were not covered at the time of dacoity. Moreover, panchnama dated 27th July, 2015 may not be as per the requirement of section 27 of the Evidence Act, however, it can be treated as seizure panchnama of the gold from row house no. 96 owned by co-accused Ayesha. In this search, 10 gold biscuits of 1 kg. each were found along with cash of Rs.12,50,000/-, one country made pistol with 5 live cartridges, one magazine were found. Thus, these are not routinely available articles which can be found in any house. *Prima facie* there is sufficient evidence against the applicant/accused. At the time of trial, the prosecution may explain how police could reach to salempur. The applicant/accused have thereafter committed one offence of similar nature which is registered at C.R. No. 249 of 2015 with Thane Police. Considering the manner in which the offence has been committed and the evidence before the Court, I am not inclined to grant bail to applicant/accused Jishan. Hence, Bail Application No. 1484 of 2016 is rejected.

7. In Bail Application No. 1692 of 2016, the applicant Aamir , as per the case of the prosecution, is involved in the present case and gold bar weighing 1433 gms. was recovered at his instance.

8. The learned counsel for the applicant/accused Aamir has submitted that as per the case of the prosecution, applicant Aamir was not involved in the actual dacoity and he is not facing the charges under sections 395, 342, 170, 120B but he is prosecuted for the offence under sections 413 and 414. He submitted that there is no antecedents against the applicant Aamir and so under section 413 he cannot be charged, as the person should be dealing habitually in stolen property. He further submitted that under section 414, the punishment is upto 3 years with fine and the applicant/accused is arrested on 27th October, 2015. The learned counsel submitted that the applicant/accused has spent nearly one year and 4 months in prison and trial is not likely to begin in near future. He further submitted that the applicant Aamir was responsible to sell the muddemal property of 1433 gms. gold which he has sold is also recovered from the jewellers, so the applicant Aamir be granted bail.

9. Learned APP while opposing the Bail Application of

applicant/accused Aamir, has relied on the statements of three jewellers from whom 5 gold pieces weighing 1433 gms. were recovered. He confirms that the applicant Aamir does not have any criminal record and he is not involved in the case of dacoity.

10. I have considered the submissions of learned counsel for the applicant/accused Aamir and learned APP. *Prima facie* the evidence shows that the applicant/accused Aamir was involved in selling five parts of gold biscuits to different jewellers, however, the said golds are recovered. The applicant/accused Aamir is charged under section 413 and 414, however, there is no criminal record against him. Hence, I am inclined to grant bail to the applicant/accused Aamir Mohammed Hasib Khan.

11. In Bail Application Nos. 906 of 2016 and 1966 of 2016, the learned counsel for applicants/accused Fidavaris Mohammed Salim and Gyankumar Prabhudayal Pande, has submitted that the applicants/accused are innocent and they are not concerned with this offence. There is no evidence against them.

12. Learned APP while opposing Bail Application Nos. 906 of 2016

and 1966 of 2016 have submitted that the applicants/accused were employed in Sequel Logistcis Co., which was transporting the gold on that night. Learned APP submitted that these two persons gave tip about the transportation of gold to other accused who actually committed dacoity on highway. He further submitted that on that day and night, there were continuous phone calls between these two persons and therefore they have connection with this offence. Hence, they are not to be bailed out.

13. Perused the documents which are relied by both the sides. The record of call details (CDR) produced before this Court between these two applicants/accused disclosed that on that day and also on night they were continuously in touch with each other and made number of phone calls. They were also working in Sequel Logistics Co. Unless a tip is received from some person mostly from the company, no such dacoity could be committed. However, besides this, *prima facie* the applicants/accused Fidavaris and Gyankumar are not attributed role. Nothing is recovered from these applicants/accused. They are in prison since last 1 year and 4 months. Hence, I am inclined to grant bail to the applicants/accused Fidavaris Mohammed Salim and Gyankumar Prabhudayal Pande.

14. Bail Application No. 1692 of 2016, Bail Application No. 906 of 2016 and Bail Application No. 1966 of 2016 are allowed on the following terms and conditions:

ORDER

- (i) The applicants/accused Aamir Mohammed Hasib Khan, Fidavaris Mohammed Salim and Gyankumar Prabhudayal Pande be enlarged on bail upon furnishing P.R. Bond in the sum of Rs.20,000/- each with one local surety in the like amount and the P.R. Bond in the sum of Rs.20,000/- each with second surety from their native place of which the applicants/accused have given the address.
- (ii) The applicants shall not contact or pressurize the complainant.
- (iii) The applicants shall attend all the Court dates;
- (iv) The applicants shall not get associated with the co-accused;
- (v) The applicants/accused shall not commit any offence under the Indian Penal Code;
- (vi) The applicants/ shall not abscond or leave India without prior permission of the Court and furnish their residential address to the Investigating Officer alongwith documentary

proof of their address;

- (vii) 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.

15. The Applications for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)