

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

BAIL APPLICATION NO.1943 OF 2016

Vinod Vishnu Gundekar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**with
BAIL APPLICATION NO.1944 OF 2016**

Dipak Tukaram Mahadik	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**with
BAIL APPLICATION NO.1945 OF 2016**

Dinesh Tukaram Mahadik	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**with
BAIL APPLICATION NO.1946 OF 2016**

Harishchandra Subhana Gudekar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.Nitin Sejpai for all the Applicants
Mr.S.H. Yadav, APP, for Respondent – State in ABA/1943/2016
Mr.Deepak Thakery, APP, for Respondent – State in
ABA/1944/2016
Mr.Sooraj S. Hulke, APP, for Respondent – State in
ABA/1945/2016
Mr.Y.M. Nakhwa, APP, for Respondent – State in ABA/1946/2016

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 22, 2017

P.C. :

1. All these applications are moved by the applicants/accused for bail as they are prosecuted for the offences punishable under sections 395, 497 r/w 34 of the Indian Penal Code and section 4(25) of the Indian Arms Act, which is registered at C.R. No.I-22 of 2016 with Pali Police Station. The offence is registered at the instance of one Ramesh B. Parmar on 16.3.2016. It is the case of the prosecution that the complainant is a trader and he is a shop owner. However, occasionally, he does land dealings. He came across the applicant/accused Harishchandra Gudekar, a resident of Dhondse, District Raigad. He knew him since 7 to 8 years prior to the date of filing of the complaint. He had dealing of the land in which Harishchandra Gudekar gave him 250 gms gold in lieu of some cash. At that time, when he questioned him about the gold, the applicant/accused informed him that his son-in-law Santosh Mahadik deals with the business of pure gold. Towards the payment of some dues, Harishchandra Gudekar again offered one gold biscuit of 50 gms through his son-in-law Santosh Mahadik. The complainant had verified the purity of the gold which he had

received from Harishchandra Gudekar and found that it was pure gold. The applicant/accused gave him an offer to give 5 to 6 kg pure gold for Rs.1,14,00,000/-. The complainant alongwith his family members agreed to buy 5 to 6 kgs. of gold for Rs.1,14,00,000/- for which the applicant/accused Harishchandra Gudekar told them to reach one farmhouse at Paayrichiwadi in Taluka Sudhagad, District Raigad. Accordingly, the complainant alongwith his family members kept the cash of Rs.1,14,00,000/- in two cars; proceeded to Paayrichiwadi. At around 6pm, when they reached at the farmhouse, the complainant opened the farmhouse and when they all entered the drawing hall, within two minutes, 7 to 8 persons armed with swords and knives started assaulting the complainant and his relatives. One person assaulted him with sword on his stomach and hand and other persons also assaulted them with kicks and fist blows. They robbed them of the gold ornaments and also the cash of Rs.1,14,00,000/-. They tied the legs and hands of the complainant and his relatives including the applicant/accused Harishchandra Gudekar and his son-in-law Santosh and brother Dipak Mahadik, the other applicant/accused, and locked them. Thereafter, Harishchandra Gudekar could loosen his tied legs and hands and then untied all others and thus,

they could escape from the farmhouse. Thereafter, they went to the Police Station and gave information.

2. All the four applicants/accused were arrested on the same day i.e., 16.4.2016 and since then, they are in prison and hence, these Bail Applications.

3. The learned Counsel for the applicants/accused has submitted that the applicants/accused are innocent. They have not committed any offence. The learned Counsel argued that in respect of applicants/accused Vinod, Harishchandra Gudekar and Dinesh, this is their first alleged offence and they have not committed any crime. The learned Counsel submitted that the other applicant/accused Dipak was involved in one trivial matter and he is also innocent. The learned Counsel has further submitted that Harishchandra Gudekar is a senior citizen who has crossed 60 years and nothing was recovered from him. The learned Counsel further relied on the orders passed by the learned Additional Sessions Judge, Raigad on 2.8.2016 in Criminal Miscellaneous Application No.160 of 2016, where the learned Additional Sessions Judge had granted bail to one Swapnil Arne and Aditya Bhujbal. The learned Counsel has submitted that the

applicants/accused Dinesh and Dipak have played a similar role and, therefore, on the point of parity, the applicants/accused Dinesh and Dipak are to be released on bail. The learned Counsel has further submitted that Dipak was present alongwith his elder brother Santosh, who is the son-in-law of Harishchandra Gudekar. No role is attributed to Dipak. The learned Counsel further submitted that Dinesh, as per the case of the prosecution, though present, he remained outside the farmhouse and had kept a watch. Nothing was recovered from either Dipak or Dinesh. It is also submitted that the entire amount of Rs.1,10,00,000/- is recovered. Therefore, their Bail Applications be allowed.

4. Learned Prosecutors appearing for the State have submitted that there is a recovery of Rs.8,500/- cash from applicant/accused Vinod. It is submitted that he has played an active role in the offence. The learned Prosecutor also submitted that Vinod was identified in the test identification parade conducted on 2.4.2016 by witnesses Swapnil Parmar and Ramesh Parmar and their supplementary statements to that effect were recorded on 11.4.2016.

5. The learned Prosecutor appearing for State in Bail Application No.1946 of 2016, submitted that the applicant/accused Harishchandra Gudekar has initiated this offence. He has planned the offence and he is a leader of the conspiracy and he is not be granted bail.

6. The learned Prosecutors appearing in Bail Application Nos.1944 of 2016 and 1945 of 2016 also opposed the applications and pointed out that Roha Police Station has registered offence at C.R. No.4 of 2015 for the offences punishable under sections 509, 506 and 504 of the Indian Penal Code against applicant/accused Dipak.

7. Perused the FIR, the relevant papers, which are relied on by both the sides. From the FIR, it is clear that it was a plan cooked up by the applicant/accused Harishchandra Gudekar alongwith his other associates, namely, Vinod, Bhagwan and other co-accused. The conspiracy was hatched and also implemented by taking initiative by Harishchandra Gudekar and hence, his Bail Application cannot be entertained. Accordingly, the Bail Application No.1946 of 2016 is rejected.

8. Further, there is *prima facie* evidence against Vinod that he was identified by the complainant and other witnesses at the test identification parade which was conducted on 2.4.2016 so also, an amount of Rs.8,500/- was recovered from him. All the accused were arrested on the same day i.e., on 16.3.2016 when the FIR was registered. Hence, the Bail Application of Vinod also cannot be entertained and accordingly, the Bail Application No.1943 of 2016 is rejected.

9. Perused the orders passed by the learned Sessions Judge, Mangaon, District Raigad, dated 2.8.2016 in respect of two accused Swapnil and Aditya. Considered the roles attributed to Dinesh and Dipak. Dipak, as per the FIR, is the younger brother of Santosh Mahadik, who is the son-in-law of Harishchandra Gudekar. He was present throughout alongwith Santosh. Nothing is recovered from him. So also, Dinesh was given the job of keeping watch. Nothing was recovered from him as well. The two applicants/accused accused were 20 - 21 years old at the time of the offence. There is no criminal record against the two applicants/accused Dinesh and Dipak. In view of the roles attributed to these accused i.e., Dinesh and Dipak and considering

the other facts which are discussed above, I am inclined to grant bail to the two accused i.e., Dinesh and Dipak. Accordingly, the Bail Applications are disposed of as under:

- a) Bail Application Nos.1944 of 2016 and 1945 of 2016 filed by Dipak Tukaram Mahadik and Dinesh Tukaram Mahadik respectively, are allowed.
- b) Bail Application Nos.1943 and 1946 of 2016 filed by Vinod Vishnu Gundekar and Harishchandra Subhana Gundekar respectively, are rejected.
- c) The applicants-accused Dipak and Dinesh shall be released on bail upon furnishing P.R. Bond in the sum of Rs.40,000/- (Rupees Forty thousand only) each, with one or two solvent sureties in the like amount.
- d) The applicants-accused Dipak and Dinesh shall not tamper with the evidence or pressurise the complainant or the witnesses;
- e) The applicants-accused Dipak and Dinesh shall not indulge into any criminal activity and shall attend on all the

Court dates;

f) The applicants-accused Dipak and Dinesh shall not abscond or leave India without prior permission of the trial Court and furnish their permanent address 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. The learned Counsel for the applicants/accused submitted that the applicant/accused Harishchandra Gudekar is 61 years old and, therefore, he be granted bail as he is a senior citizen and the entire cash is recovered by the police.

10. In view of the submission of the learned Counsel, liberty is granted to the applicant/accused Harishchandra Gudekar to move a fresh Bail Application after one year before the trial Court, if the trial does not commence by then.

(MRIDULA BHATKAR, J.)