

Anand

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

BAIL APPLICATION NO. 179 OF 2018

Bhagwan Tukaram Mahadik .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Abhishek Yende, Advocate, for the Applicant
Mr. H. J. Dedhia, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 20.02.2018

P.C.

. Heard learned counsel for the parties.

2. This is the second bail Application preferred by the Applicant. The first bail Application was dismissed as withdrawn.

3. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. I – 22 of 2016 registered with the Pali Police Station, District – Raigad for the alleged offences punishable under Sections 395, 397, 120B of the Indian Penal Code and under Sections 4 r/w 25 of the Arms Act.

4. According to the Complainant – Ramesh Bhikamchand Parmar, the incident took place on 15.03.2016, pursuant to which, he lodged an FIR on 16.03.2016. According to the Complainant, a shop owner, he was also dealing in land. He has stated that he knew Harishchandra Gudekar, a resident of Dhondse, District – Raigad for about 7 – 8 years prior to the incident, as Harishchandra Gudekar was doing land dealings. He has stated that in one such dealing that took place between him and Harishchandra Gudekar, Harishchandra Gudekar had given 250 gms of gold, in lieu of cash. He has stated that when he questioned about the gold, Harishchandra Gudekar informed him that his son-in-law – Santosh Mahadik was in the business of gold. He has further stated that as some more payment was due, Harishchandra Gudekar again offered, one gold biscuit of 50 gms through his son-in-law – Santosh Mahadik and on verification of the purity of the gold, it was found that it was pure gold. He has further stated that Harishchandra Gudekar offered to give him 5-6 kgs of pure gold for Rs. 1,14,00,000/-, pursuant to which he and his family members agreed to purchase 5-6 kgs of gold from Harishchandra Gudekar's son-in-law Santosh Mahadik. According to the Complainant, Harishchandra Gudekar asked him to come to a farm house at Paayrichiwadi, Taluka – Sudhagad, District – Raigad, pursuant to which he, and his family

members proceeded to Paayrichiwadi with cash of Rs. 1,14,00,000/- in two cars; that at around 6.00 p.m. when they reached the farm house, the Complainant entered the house; that within two minutes, 7-8 persons armed with swords and knives came and started assaulting him (Complainant) and his relatives and robbed them, all of their gold ornaments which they had worn, as well as cash of Rs.1,14,00,000/-; that the said accused tied their legs as well as hands, including that of Harishchandra Gudekar and his son-in-law and locked them. Thereafter, Harishchandra Gudekar untied his legs and hands and helped others and as such, they escaped from the farm house. Pursuant to the said incident, the Complainant – Ramesh Parmar lodged the aforesaid complaint.

5. As far as the Applicant is concerned, he was arrested on 16.03.2016. In the identification parade, the Applicant has been identified by the Complainant, Swapnil Parmar, Lalit Oswal & Kamlesh Jain. Although learned counsel for the Applicant submitted that there is a discrepancy in the statements of the aforesaid persons with regard to the assault on Sanket, a perusal of the identification parade report shows that all i.e. the Complainant - Ramesh Parmar, Lalit Oswal & Kamlesh Jain (except Swapnil) have clearly stated that the Applicant had assaulted Sanket. Same cannot be stated to be a major discrepancy. The

fact remains that the Applicant has been identified by four persons as being one of the assailant and as such it shows that the Applicant was present. There is recovery of cash and gold at the instance of co-accused – Vinod from the backyard of the Applicant's house.

6. Although learned counsel for the Applicant submitted that the identification parade will lose its significance, as the Applicant's photographs were available, as is evident from the spot panchanama and the recovery panchanama, the fact remains, that there is nothing to show that the Complainant or any of the witnesses who have identified the Applicant was present at the time when the said panchanamas were drawn. Apart from the aforesaid evidence, it appears that the Applicant had taken Madhukar Ghosalkar's car i.e. Maruti Eco on 15.03.2016 on rent and had returned the same back on the very same day. It appears from the statements of witnesses, that a Maruti Eco car was used in the commission of the said offence.

7. Considering the prima facie material on record, this is not a fit case to enlarge the Applicant on bail. It appears that the Applicant has one antecedent.

8. Accordingly, the Application stands rejected.

(REVATI MOHITE DERE, J.)