

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2878 OF 2017**

WITH

CRIMINAL APPLICATION NO. 114 OF 2018

Aakash Basavraj Dodmani. .. Applicant.

V/s.

The State of Maharashtra. ..Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 2520 OF 2017

Yusuf Mehboob Korbu. .. Applicant.

V/s.

The State of Maharashtra. ..Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 2736 OF 2017

Ajay Ranjit Shedge. .. Applicant.

V/s.

The State of Maharashtra. ..Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 2672 OF 2017

Tushar @ Tuslya Gautam Zende. .. Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Vishal Laxman Kolekar, advocate for applicant in BA 2878/17.

Mr. Ganesh Bhujbal, advocate for intervenor in BA 2878/17.

Mr. Satyavrat Joshi, advocate for applicant in BA 2520/17 & BA 2672/17.

Mr. Samir Vaidya I/b. Mr. Ravishankar B. Thombare, advocate for applicant in BA 2736/2017.

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Mr. S.R. Agarkar, Mrs. Veera Shinde, Mr. S.H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JUNE 27, 2018.

P. C. :

1 Heard the learned Counsel for the applicants, learned Counsel for the intervenor and the learned APP for State.

2 These are the applications under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested during September and November, 2016 in Crime No. 615 of 2016 registered at Nigadi Police Station for offence punishable under section 395 of the Indian Penal Code and section 4 read with section 25 of the Indian Arms Act.

3 It is the case of the prosecution that one Mahesh Kalal had informed the police station on 5/9/2016 alleging therein that he is the owner of Toddy shop. That on 4/9/2016 at about 9 to 9.15 p.m. he was standing on the road alongwith his friends. He had suddenly seen 7 to 8 person entering into toddy shop. After some time, he had heard loud noise of stamping. He alongwith his friends had tried to peep inside. Since the said person were armed with weapons, they did not dare to go inside. He has seen that the said unknown person had accosted cashier

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Ravi Baskar and his helper Rama Gaikwad. Thereafter, they had brandished their weapon. They had stolen Rs. 14,000/- from the cash counter and had caused damage to the property in the toddy shop.

4 In the course of investigation, test identification parade was conducted. The first informant had failed to identify any of the present applicants. He had identified one Vijay and Akshay and some other accused person.

5 On the last date of the hearing, learned APP had made a statement that there was a CCTV footage and the images of the said person are captured in the CCTV footage. Upon query made by the court, the investigating agency had filed supplementary charge-sheet. Today, supplementary charge-sheet is perused and upon perusal, it appears that it only has images of the accused persons while committing the said act. However, there is no narration as to who are the persons whose images are captured in the CCTV footage. Neither the identifying witnesses/first informant nor any one else from the investigating agency had identified the person whose images were captured in the CCTV footage. The learned APP admits that the procedure adopted by the investigating agency is not correct.

6 It is pertinent to note that there is no recovery from any of the

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present applicants.

7 The learned APP submits that the accused Yusuf Korbu and Akash Dodmani have criminal antecedents of same nature i.e. they have been charge-sheeted in more than 3 cases for offence punishable under section 380, 452, 454 of the Indian Penal Code. Akash Dodmani and Yusuf Korbu are also charge-sheeted in Crime No. 463/16 and 541/16 for offence punishable under section 379 of the Indian Penal Code. They have criminal antecedents and therefore, the respective counsel appearing for Akash and Yusuf on instructions submit that they would not press for their applications. Since they are young boys, trial be expedited.

8 As far as the applicants Tushar @ Tuslya Gautam Zende and Ajay Ranjit Shedge, there is no specific incriminating material which would warrant further incarceration.

9 However, the observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the time of trial.

10 Hence, following order is passed :

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ORDER

- (i) The Criminal Bail Application Nos. 2878/2017 and 2520/2017 stand dismissed as withdrawn and disposed of accordingly.
- (ii) Criminal Bail Application Nos. 2672/2017 and 2736/2017 are allowed.
- (iii) The applicants- Tushar @ Tuslya Gautam Zende and Ajay Ranjit Shedge be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each with one or more solvent sureties in the like amount.
- (iv) The applicants shall not leave the jurisdiction of Pune Municipal limits till the conclusion of the trial.
- (v) The applicants shall not tamper with the evidence.
- 11 The applications are disposed of accordingly.
- 12 Intervention application No. 114 of 2018 is heard, allowed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]