

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

**CRIMINAL BAIL APPLICATION NO.3044 OF 2018**

|                                    |               |
|------------------------------------|---------------|
| 1) Rupesh Vitthal Gadge @ Natya; & |               |
| 2) Satish Vitthal Gadge            | .. Applicants |
| <b>Vs.</b>                         |               |
| State of Maharashtra               | .. Respondent |

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Mr.Niranjan S.Mundargi i/b. M/s.Hulyalkar & Associates,  
Advocate for the Applicants.

Mr.A.R. Kapadnis, APP for the Respondent – State.

Mr.Vikas Salvi, CBD Police Station, present.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : DECEMBER 18, 2018.**

**P.C. :**

This is an application for bail in connection with C.R.No.35 of 2018, registered with CBD Belapur Police Station, Navi Mumbai, for the offences punishable under Sections 397, 365 and 506 read with 34 of Indian Penal Code (“IPC”, for short). First Information Report (“FIR”, for short) was registered on 22<sup>nd</sup> February, 2018.

2                   The case of the prosecution is that on 21<sup>st</sup> February, 2018, while the complainant, Deepak Singh, Prashant Singh was

travelling by their Eco Sports Car, the accused intercepted them. The inmates of the Eco Sports Car were assaulted with fist blows and belt. They were taken to Khopoli, Talegaon and detained. They were also abused and accused committed theft of Rs.8,65,000/-, from the bag of Deepak Singh and Rs./3,65,000/-, from the bag of the complainant. Accused also committed theft of TT Form and other documents of Eco Sports Car. The complainant and others were taken to Pune Mumbai highway. They were also detained in container and subsequently they left the said place. Applicants were arrested on 11<sup>th</sup> July, 2018. On completing investigation, charge - sheet has been filed.

3            Learned counsel for the applicants submitted that first information report was lodged against unknown person. The allegation that the accused has committed theft of the goods is false and there is no evidence to carry the huge amount in the car. The car, which was used by the complainant and others belongs to applicant no.1. It is submitted that the applicants are in custody from the date of arrest. No purpose will be served by keeping them in custody. The identification parade is not part of the charge - sheet. Although, the prosecution has alleged that the applicants are identified, the record does not indicate that as to

how they were identified and what role has been assigned to them. Prosecution has not produced the memo of Test Identification Parade. The parade was purportedly conducted on 5<sup>th</sup> October, 2018. The evidence on record indicate that the car belongs to the applicants and the same was given to one Bharat Gajbhiye, who in turn handed over the car to the relatives of the complainant. It is, therefore, prayed that bail may be granted to the applicants.

4            Learned APP submitted that the applicants are involved in intercepting complainant and others they were dragged from the car and make to sit in another car. They were taken to Bombay Pune Highway. The complainant and others were assaulted and abused. They were confined. The car, which was used by them was taken away by the accused. Cash of Rs.12,44,000/- was taken away by the accused. They are identified in the test identification parade. Applicants are having antecedents and two cases are registered against applicant no.1. It is submitted that there is a recovery of Rs.3,50,000/-, from applicant no.1. The balance amount was not recovered. It is, therefore, submitted that the application may be rejected.

5           I have perused the documents. It is apparent that the car was given to Bharat Gajabhiye by the applicant no.1 viz. Eco Sports Car. According to the complainant, the said car was given to Nilesh Singh, who is related to the complainant and since last 1 ½ years the same was used by him. The documents in relation to the registration of the car shows that the said car is registered in the name of applicant no.1. FIR was registered against unknown person. Applicants were arrested on 11<sup>th</sup> July, 2018, and, according to the prosecution, the parade was held on 5<sup>th</sup> October, 2018. There is no plausible explanation for holding the parade belatedly, although, the applicants were in custody. The test identification parade memo is not part of the charge-sheet. The document is yet to be received from the Tahasildar, Thane. It is submitted by learned APP that the parade memo, which would be obtained by the prosecution from Tahsildar, for being included in the charge-sheet. There is nothing to indicate that any statements of witnesses were recorded in pursuant to the test identification parade, attributing any overtact to the applicants with regards to their participation in the alleged crime. There is recovery of some cash, as stated above from one of the accused. It is also pertinent to note that the prosecution alleges the theft of car, which is registered in the name of applicant no.1. It is also

noted that the investigation is completed and the charge-sheet is filed. There is recovery of Rs.3,50,000/-, from accused no.1, and, although, the accused are in custody from the date of arrest, no other recovery is affected. The Eco Sport Car, which is the subject matter of the alleged incident has been handed over to the finance company from whom the loan was obtained for purchasing the said car. In view of the above, further detention of the applicants is not necessary. On certain conditions, bail can be granted to the applicants.

6                      Hence, I pass the following order:

**:: ORDER ::**

- (i) Bail Application No.3044 2018, is allowed;
- (ii) Applicants are directed to be released on bail in connection with C.R.No.35 of 2018, registered with CBD Belapur Police Station, Navi Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, each, with one or more sureties in the like amount;

- (iii) Applicants are directed to attend the CBD Belapur Police Station, Navi Mumbai, once in a month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Applicants shall not tamper with the evidence ;
- (vi) Bail Application stands disposed of.

**(PRAKASH D. NAIK, J.)**