

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 2073 OF 2019

Dipak Shivaji Medge

...Applicant

Versus

The State Of Maharashtra

...Respondent

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Mr. Pradip D. Gharat, Advocate for the Applicant.

Mr. Prashant Jadhav, APP, for the Respondent-State.

Mr. S.A. Shinde, HC-2371, Deccan Police Station, Pune is present in Court.

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CORAM : SARANG V. KOTWAL, J.

DATE : 30th SEPTEMBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R. No.34/2019 registered at Deccan Police Station, Pune under Sections 392, 384, 342, 380, 386 read with 34 of I.P.C. and Sections 3 & 4 read with Section 25 of the Arms Act.
2. The applicant is arrested on 11.2.2019 and since then he is in custody.
3. The FIR is lodged by Hemaji Gulabchand Chheda on 16.1.2019. He has stated that his brother-in-law i.e. his sister's husband had a flat in Mumbai and a bungalow in Pune. On

16.1.2019, they had gone to their bungalow in Pune. At around 9:30 a.m. on 16.1.2019, suddenly four unknown persons entered the bungalow. One was having pistol and other was having a knife. They overpowered the first informant, their servant Anant Khale, driver Shivaji Medge and house-maid Taibai. They went to the room of informant's brother-in-law and forcefully removed the ornaments and cash worth Rs.5,70,000/-. The informant in order to save himself told that he could arrange more money from Mumbai. Therefore, one of the unknown persons took the driver Shivaji to their Swift Car.

4. The applicant is the son of the said driver Shivaji Medge. The prosecution case is that the applicant gave tip to other accused and he is the mastermind behind commission of the offence. On the basis of these allegations, the FIR was lodged. After the three accused had escaped, the informant and others started raising shouts.

5. The applicant as mentioned earlier, was arrested on 11.2.2019, and since then he is in custody. The investigation is over and the charge sheet is already filed. The charge-sheet

contains statements of other victims as well, who only say that the robbery was committed in the same manner as was described by the first informant.

6. Heard Shri Pradip Gharat, learned Counsel for the applicant and Shri Prashant Jadhav, learned APP for the State.

7. Shri Gharat submitted that there is no legally admissible evidence against the present applicant. He emphasized that five accused are already granted bail and out of them, two accused, according to the prosecution case, had actually committed the robbery by entering in that bungalow. He submitted that there is nothing to show that the applicant was the mastermind behind this offence. He submitted that the recovery from his car cannot be connected with the crime in question and nobody has identified the ornaments. The recovery was effected much belatedly and, therefore, there is no connection with the alleged offence.

8. Learned A.P.P. opposed this application and added that the applicant was fully aware about the informant's brother-in-law having so much cash and ornaments in his house. Applicant's father was working as a driver with him and, therefore, he had

given instructions to others to commit robbery. Therefore, he is the main accused.

9. I have considered all these submissions. Even as per the prosecution case the applicant was not present in the bungalow when the offence of the robbery was committed. He is not identified in the Test Identification Parade. The only evidence against him is recovery of ornaments and cash from his car. This recovery was effected on 11.2.2019 when he was arrested. At that time, the police found 50 American diamonds, one red coloured precious stone and Rs.40,000/- in his car. This recovery is effected after about a month from the date of commission of the offence. Significantly these diamonds and the precious stone was not shown to the informant or his brother-in-law to enable them to identify those articles as the stolen articles. Therefore, this recovery cannot be connected with the incident of robbery. There is no other material in entire chargesheet showing applicant's complicity. Only because the applicant was son of the victim's driver that by itself will not mean that he was the mastermind behind commission of this offence. In this view of the matter, the applicant has made out a case for his release on bail. However, the

trial Court should independently decide the trial without being influenced by these observations. Hence, the following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No.34/2019 registered at Deccan Police Station, Pune on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)