

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1276 OF 2020

Radhakisan @ Balu Waman Patole

... **Versus** ...

The State of Maharashtra

...

Mr. S.S. Ladda, Advocate for applicant

Mr. N.T. Bhagat, APP for respondent/State

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th DECEMBER, 2020.

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973. Applicant has been arrested in connection with Crime No.437/2020 by Police Station, M.I.D.C., Waluj, Dist. Aurangabad for the offence punishable under Section 394 read with Section 34 of the Indian Penal Code.

2 Heard learned Advocate Mr. S.S. Ladda for applicant and learned AGP Mr. N.T. Bhagat for respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant is innocent. The alleged incident is stated to have taken place

on 06.09.2020, however, the First Information Report has been registered in the midnight of 10.09.2020. There is delay of four days, which is not explained by the informant. In fact, brother of the present applicant Balu Waman Patole was murdered by the friends of informant on 10.07.2020 vide Crime No.344/2020. Offence was registered under Section 302, 143, 147, 148, 149, 114 of the Indian Penal Code. Just in order to pressurize the applicant a false and concocted FIR is lodged. The co-accused are already released. The present applicant had also approached the Sessions Court, however, his application has been rejected, on the ground of his criminal antecedents. Only two cases are pending against him inclusive of the present case. In other cases he is acquitted. Further, in **Prabhakar Tewari vs. State of Uttar Pradesh, Criminal Appeal No.152 of 2020 decided on 24th January, 2020**, the Hon'ble Apex Court has held that criminal antecedents cannot be the ground for refusal of bail. Now, the case, under which he is arrested, is triable by Court of Sessions. Almost entire investigation is over, and therefore, his further physical custody is not required. Learned Advocate, therefore, prayed for release of the applicant on bail.

4 Per contra, the learned APP strongly opposed the application. It is submitted that the present applicant is a hardened criminal. More than 10 cases are registered against him. Most of them are the offences against body.

He is also involved in offence under Section 302 of the Indian Penal Code. The informant was abducted and then by assaulting him, his ATM card was forcibly taken and by using the said card and asking him to part with the PIN, amount of Rs.11,500/- has been withdrawn, so also, the cash of Rs.7,000/- has been stolen. There is evidence against the present applicant. One of the accused is still absconding, and therefore, the applicant does not deserve any sympathy.

5 At the outset, it is to be noted that applicant has given his age as 28 and he has also produced on record certain Judgments, in which he has been acquitted. The first case, in which he appears to have been involved, was registered in 2008 and the Judgment states that his age was 18, at that time. It was under Section 341, 323, 504, 506(2) of the Indian Penal Code. Thereafter, the say given by the Investigating Officer would show that in 10 offences he is an accused.

Sr.No.	Crime No.	Offence under Section
01	138/2006	341, 323, 504, 506 of IPC
02	54/2007	341, 323, 504, 506 of IPC
03	166/2007	452, 325, 323, 427, 504, 506 r.w.s. 34 of IPC
04	79/2008	459, 380 of IPC
05	209/2008	302, 201 r.w.s. 34 of IPC
06	136/2012	353, 143, 147, 148, 149, 332, 333, 504 of IPC and Section 135 of Bombay Police Act.
07	26/2012	142 of Bombay Police Act

08	352/2013	498(A), 323, 504, 506 r.w.s. 34 of IPC
09	53/2016	307, 341, 504 r.w.s. 34 of IPC
10	277/2018	392, 323, 504, 506 r.w.s. 34 of IPC

The applicant has produced certified copies of certain pronouncements, in which he has been acquitted. They are six in numbers. He has not given account in respect of other four matters. Those four left out matters are – Crime No.166/2007 under Section 452, 325, 323, 504, 506 read with Section 34 of the Indian Penal Code, Crime No.209/2008 under Section 302, 201 read with Section 34 of the Indian Penal Code, Crime No.53/2016 under Section 307, 341, 504 read with Section 34 of the Indian Penal Code and Crime No.277/2018 under Section 392, 323, 504, 506 read with Section 34 of the Indian Penal Code. All are the offences against the body. At the costs of repetition, it can be seen, that though the applicant is acquitted, yet, his record from 2007 if seen, it would show that he was 18 years old and it has gone up to the offence under Section 302 of the Indian Penal Code. Therefore, this criminal record is definitely required to be looked into while considering the present application for release of the applicant on bail.

6 Even if it is considered that the brother of the present applicant was murdered on 10.07.2020, yet, the informant is not accused in that case.

The informant appears to have been mercilessly beaten, as it appears from his photographs before snatching the cash from him or taking ATM from him forcibly. Further, the investigation papers also show that the present applicant has discovered amount of Rs.5,700/- from his house. There also appears to be record taken from the bank account, which shows that by using the said ATM card, amount has been withdrawn thrice from the account of the informant. The weapon i.e. wooden log used in the commission of the crime also appears to have been seized at the instance of the present applicant. Therefore, when there is evidence against the applicant collected by the Investigating Officer, so also, his criminal antecedents are there, case is not made out to release him on bail. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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