

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.1152/2019

Vishal Mahendra Khobragade and anr. .vs. State of Maharashtra through
PSO P.S. Desaijanj, Dist.Gadchiroli.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. R. M. Patwardhan, Advocate for applicants.
Mr. S. M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 07, 2020

Heard Mr. Patwardhan, learned counsel for applicant and Mr. Ghodeswar, learned A.P.P. for non applicant-State in extenso. Also perused the charge-sheet.

2. Applicant no.1 is accused no.4 and applicant no.2 is accused no.3 in Crime No.208/2019 registered with Police Station, Desaijanj, Dist. Gadchiroli for an offence punishable under Sections 341 and 395 of the Indian Penal Code (IPC).

3. The crime was registered on the basis of oral report lodged on 24.07.2019 by one Shivramadu Sheshanna Mangli, resident of Sharif Nagar, Tahsil Kalur, District Karnul, Andhra Pradesh. The first informant is a truck driver by profession.

4. As per his oral report, he and his cleaner one Bhagwan Singh started their return journey from Bhilai (Chattisgarh). The vehicle having registration No. AP-21/TY-9393 was owned by K. Venkatarami Reddy resident of

Krushna Nagar, Karnul, District Karnul, Andhra Pradesh. The truck was loaded with iron wires and it was proceeding from Bhilai to Karnul. When the truck was proceeding towards Wadsa from Arjuni, prior to 5 km. of Wadsa, in the intervening night on 23.07.2019 and 24.7.2019, one blue colour Maruti Suzuki chased the truck and then stopped it. As per the report, five persons alighted from the said Maruti vehicle and out of them, two climbed in the cabin of the truck and pulled the driver and cleaner. According to the statement of the first informant, three persons who were standing near the truck assaulted. From the statement of the first informant, it is crystal clear that previously two persons who climbed in the cabin of the truck took away Rs.16,000/-, which according to the first informant were kept for the travel expenses, as given to him by his owner.

5. In the FIR itself, the truck driver specifically stated the registration number of Maruti vehicle i.e. MH-31/AH-7470.

6. The investigating officer, taking the clue from the said registration number, conducted the investigation. It appears from the record that the said vehicle is owned by applicant no.2.

7. In all 6 persons are arrested in the crime. All are in jail. The present applicants are accused nos.4 and 3. During the investigation, the investigating officer conducted test identification parade. The test identification parade was

conducted on 04.09.2019. In the said test identification parade, first informant Shivramadu Sheshanna Mangli duly identified applicant no.2-Nandalal Wasnik. However, he did not identify applicant no.1-Vishal Khobragade.

8. It is the submission of the learned counsel for the applicant that there is a delay in holding test identification parade from registration of the crime.

9. The report was lodged on 24.07.2019 and test identification parade was conducted on 04.09.2019. At the first blush, the submission of learned counsel for applicant may appear to be very attractive. However, in my opinion, the said has to be rejected, in view of the admitted fact that the first informant Shivramadu is a truck driver, resident of Andhra Pradesh and is always on the wheels of the truck to earn his livelihood. Therefore, it is quite possible, to secure his presence to conduct the test identification parade, the investigating officer may have required some time.

10. In that view of the matter, merely because there is a delay which can always to be explained by the investigating officer during the course of trial, cannot be advantageous for accused persons especially when in the test identification parade, which was conducted in accordance with law, applicant no.2 has been identified.

11. On a specific query made to the learned APP in respect of past criminal record of the applicants, the learned

APP fairly states that he has instructions from the investigating officer to make a statement that there is no past criminal record at the discredit of applicant no.1. Applicant no.1 is not identified by the driver or even his cleaner.

12. In the aforesaid backdrop of the factual scenario, I pass the following order.

ORDER

- (i) Application is partly allowed.
- (ii) Application of applicant no.2 is hereby rejected.
- (iii) Application of applicant no.1 is hereby allowed. Applicant no.1-Vishal Mahendra Khobragade be released on bail in connection with Crime No.208/2019 registered with Police Station, Desaiganj, Dist. Gadchiroli for an offence punishable under Sections 341 and 395 of the Indian Penal Code on executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (iv) Applicant is directed to attend police station, Desaiganj, Dist. Gadchiroli, once in three months till culmination of the trial.

The application is disposed of.

JUDGE