

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 BAIL APPLICATION NO.8 OF 2021

AKASH @ LALYA RAJENDRA BORASE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. J.V. Deshpande and Mr. S.N. Dudhate, Advocates for applicants

Mr. S.Y. Mahajan, APP for respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22nd JANUARY, 2021.

ORDER :

1 Present applicants have been arrested, in connection with Crime No.275/2020 dated 03.12.2020 registered with Wadod-Bazar (Aurangabad Rural) Police Station, for the offence punishable under Section 394 read with Section 34 of the Indian Penal Code. They have filed present application for bail under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. J.V. Deshpande for the applicants and learned APP Mr. S.Y. Mahajan for the respondent.

3 It has been vehemently submitted on behalf of the applicants that substantial part of the investigation is over and there is some recovery

from either the applicants or their family members in the form of money. After taking this Court through the First Information Report, it has been submitted by learned Advocate for the applicants that the applicants have been falsely implicated, merely because they are from the same village and were found nearby the spot. If we perused the FIR, it is against the unknown persons. The location of the offence was away at about 7 k.ms. from village Fulambri. Further, the applicants are from one village but the other co-accused are from different place. There could not have been a conspiracy amongst them. Taking into consideration the age of the applicants they need not be kept with the hardened criminals, as it would take long time to file charge sheet as well as to stand their trial. He, therefore, canvassed for the bail for the applicants.

4 Learned APP strongly opposed the application and submitted that there is ample evidence, that is collected in this case, against the present applicants. The informant was chased by two motorcycles and after they could manage the informant to fall down, who was also travelling from his motorcycle; though he resisted they had snatched the bag containing amount of Rs.5,35,000/-. They could find a Hero Deluxe motorcycle parked at the place, though the persons had managed to flee away and they had noted the number of the vehicle as well as chassis number and then the entire fact was

conveyed to police. After the accused persons have been arrested, they were interrogated. It was told that accused Vishal and Ravindra had taken amount of Rs.1,00,000/- each. Further, Rs.1,00,000/- was given to accused Yogesh. The amounts have been then recovered. Further, there is recovery from the brothers of the other co-accused, who had received the booty. Only an amount of Rs.42,200/- is required to be recovered yet and the mastermind of the entire incident Ravindra Kolte is absconding, and therefore, it will not be proper to release the applicants on bail, as there is ample evidence against them.

5 At the outset, it is to be noted that the age of the present applicants is 24, 21 and 19 respectively. The vehicle, which is stated to be found near the spot, is different from, which has been seized from the accused. Names of the accused persons are not mentioned in the FIR and it is clearly against unknown persons. Description of the accused persons has also not been given. Further, at this stage, the police papers do not show identification parade conducted. Now, statements of witnesses regarding the incident without name of any accused and without there being any identification parade is on record. Further, there is evidence about seizure of articles. Some are under Section 27 of the Indian Evidence Act, which is mostly in respect of the amount. It is to be noted that in the FIR the

informant has not given the currency note numbers, and therefore, it is hard to believe then without there being any evidence, which has to be then tested, to show that the amount which has been recovered under Section 27 of the Indian Evidence Act is the same. That means, the currency notes are the same, which were taken out from the custody of the informant. Now, when the substantial part of the investigation is over, then only for the recovery of the some remaining amount and for absconding accused the applicants need not be kept in jail. By imposing stringent conditions the application deserves to be allowed. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Akash @ Lalya Rajendra Borase, 2) Amol @ Dola Santosh Jadhav and 3) Sachin Ramesh Bankar, who have been arrested, in connection with Crime No.275/2020 dated 03.12.2020 registered with Wadod-Bazar (Aurangabad Rural) Police Station, for the offence punishable under Section 394 read with Section 34 of the Indian Penal Code, be released on PR. of Rs.50,000/- (Rupees Fifty Thousand only) each with one solvent surety of Rs.25,000/- (Rupees Twenty Five Thousand).

3 The applicants shall not tamper with the evidence of the

prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 They shall attend the Wadod-Bazar (Aurangabad Rural) Police Station on every Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

6 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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