

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.74 OF 2021

Uttam s/o Jesaram Sundesha @ Mali,
Age 30 years, Occupation Labour,
R/o Ward No.01, Junjani Road,
Bhinmal Dist. Jalor. Rajasthan
343029.

...Applicant

VERSUS

The State of Maharashtra,
Through City Police Station,
Nandurbar Tq. And Dist.
Nandurbar.

...Respondent

.....
Advocate for Applicant : Mr. J. M. Murkute.
APP for Respondent : Mr. N. T. Bhagat.

.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
08-03-2021.**

**Date of Pronouncing The Order :
19-03-2021.**

ORDER :

1. Present applicant is the original accused No.3 who came to be arrested on 28-10-2020, in connection with Crime No.658 of 2020, registered with Nandurbar City Police Station, Nandurbar, for the offences punishable under Section 394, 342, 120-B, 380, 323, 34 of Indian Penal Code, under Section 37 (1) (3), 135 of Maharashtra Police

Act, and under Section 3/25 of Arms Act. He has filed present application under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Mr. J. M. Murkute for applicant and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report which is lodged by one Devendra Chandanmal Jain would show that he and his relative Hitendra Jain run a business by name D. C. Developers in partnership which is in respect of purchase and sale of land / plot. Their office is near Ganpati Temple in Nandurbar. He states that the office was closed around 05.00 p.m. on 18-08-2020 in which they had kept about Rs.15,69,000/- in cash. On the next day at about 08.40 a.m. he was informed that there is theft in their office, it was informed by accused No.1 who was then working with the informant. It was pretended that two persons had tied him and by showing gun, the amount was stolen. There were CCTV cameras installed in the office, and after going through the CCTV cameras, it was concluded that the accused No.1 and 2 who were also then working with the informant had hatched up a conspiracy and stolen the cash and other articles to the tune of Rs.19,69,000/-.

4. It has been further submitted on behalf of the applicant that the name of the present applicant is stated to have been disclosed by accused No.1. In fact, now investigation is over and charge-sheet is filed. Perusal of the charge-sheet would show that there is absolutely no direct evidence against the present applicant. He has not been seen in the CCTV Footage. So also the necessary certificate under Section 65-B of the Indian Evidence Act has not been annexed. Nothing has been seized from the present applicant which can be said to be connecting to the articles stolen. The statement of accused No.1 in which the name of the present applicant has been disclosed is inadmissible in nature. Further though it is stated that amount of Rs.1,70,000/- has been recovered from the present applicant, it appears that the recovery panchanama is prepared back dated. In fact, that amount which has been recovered from his house belongs to him. It would take long time to stand his trial and, therefore, he deserves to be released on bail.

5. Per contra, the learned Additional Public Prosecutor strongly opposed the applicant and submitted that at this stage it cannot be said that the panchanama is back dated. Amount of Rs.1,70,000/- has been recovered from possession of the present applicant. In fact, when the name of the present applicant came to be disclosed

by accused No.1, the investigating team had gone to Rajasthan from where the present applicant belongs and had made investigation at that place also. The cream colour pant has been recovered from the present applicant which can be seen in the CCTV Footage. There was no necessity to have any identification parade under the said circumstance that except the accused No.1 and 2 nobody else could be said to be present, and it has been now transpired that those persons themselves are accused. There is CCTV Footage in which the presence of the applicant can be seen. There is certificate issued under Section 65-B of the Indian Evidence Act and the hash value of the CCTV Footage has been taken. One more important point that is required to be considered is that the present applicant has criminal record. There are about 15 cases pending against the present applicant in the police station at Bhinmal in Rajasthan. Most of those offences are under Section 457, 380 of Indian Penal code. One is under Section 363, 366, 376 of Indian Penal Code. In two cases he has been convicted and in two cases he has been acquitted, from one case he has been discharged, however all the other cases are still pending. Under such circumstances, possibility of similar offences by accused cannot be ruled out.

6. At the outset, it is to be noted that though now the charge-

sheet is filed, that means the physical custody of the present applicant is not required for the purpose of investigation, yet the evidence that is collected against the present applicant will have be considered. It appears from the contents of the First Information Report and the statements of witnesses that accused No.1 Umedsing Bhavanising Rajput and accused No.2 Bhagwatsing Jogsing Rajput @ Bhagu were serving with the informant. Umedsing had given information to the informant about the theft, and it was told that, two persons had assaulted Umedsing and by showing gun to him and by tying his hands, the theft has been committed. The CCTV Footage was seen, however one Vikramsing Rajput had given information that the said conspiracy was hatched up by the accused No.1 and 2. It is told that cash of Rs.15,69,000/- was stolen from the informant's office and amount of Rs.4,00,000/- was stolen from the house of Vikramsing. Statement of said Vikramsing has been recorded who has expressed suspicion over the acts of accused No.1 and 2. No doubt it appears from the record that the name of the present applicant has been disclosed by accused No.1 in his statement under Section 27 of the Indian Evidence Act, however the link that is further established is the recovery of cash of Rs.1,70,000/- from the present applicant. The manner in which the offence has been committed and also the fact that the present applicant is having

criminal record, that too with Rajasthan Police, he does not deserve to be released on bail. Hence, applicant stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-