

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.121 OF 2021

SACHIN MACHHINDRA RATHOD AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.D. Kasliwal, Advocate for applicants

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17th MARCH, 2021.

ORDER :

1 Present applicants have been arrested in connection with Crime No.491/2020 registered with Upnagar Police Station, Nandurbar, for the offence punishable under Section 392, 411 read with Section 34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. A.D. Kasliwal for applicants and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicants that now the investigation is over and charge sheet is filed, therefore, custody

of the applicants is not required for the purpose of investigation. When the First Information Report has been lodged by one Chetan Rajendra Sapkar, it was against unknown persons. He is a courier boy, serving with one Delivery Courier Service, Nandurbar. Their company is delivering the goods, which have been ordered by the customers online. There were three delivery boys including the informant. One Rohit Kasar and Nitin Kadam were also serving like him. They have been assigned various areas. It is stated that one Manisha from Chhoria Residency, Nandurbar had ordered VIVO company mobile, online, on 'cash on delivery' mode. When he had attempted to deliver the said mobile, initially it was told by said Manisha that she is not at home, but she would give a call after 12.00 p.m. and then he should come. Thereafter, he received phone call around 12.48 p.m. stating that she is standing near Chhoria Residency and he should come and deliver the mobile. When the informant and another courier boy went to the said place around 1.30 p.m., they found two persons standing and they asked, as to whether the informant has brought their parcel. After informant said 'yes' and he took out the parcel and kept it on the petrol tank of his motorcycle, one person wearing black pant and shirt tried to take out amount from his pocket and after showing that amount he again kept it in his own pocket and then started talking to him. At the same time, he snatched the parcel from the petrol tank and pushed informant's motorcycle. As a result of which,

informant and his friend fell down. Till then the person, who had snatched the mobile went on another motorcycle. One more motorcycle of black colour came behind the said motorcycle and all the three persons went towards Karajkupa village. Informant had tried to chase them but in vain. Then he lodged the report.

4 It is further submitted on behalf of the applicants that nothing has been seized from the custody of the present applicants and the prosecution has now come up with the case that the present applicants have sold the said mobile as well as many mobiles to accused No.4. When the investigation is complete and charge sheet is filed and it would take long time to stand their trial, they deserve to be released on bail. Further, they are aged between 18 to 20. They need not be asked to languish in jail and be in the company of hardened criminals.

5 Per contra, the learned APP strongly submitted that there is ample evidence against the present applicants. Though the FIR was lodged against unknown persons, yet after the present applicants were arrested the identification parade has been conducted. The informant and his friend, who was there with informant at the relevant time, identified the applicants before the Executive Magistrate. The discovery of many mobiles, which have been similarly snatched from various places, has been given and then they

are recovered from accused No.4. Under such circumstance, they do not deserve any sympathy.

6 At the outset, the investigation is over and charge sheet is filed, therefore, the further physical custody of the applicants is no longer required for the purpose of investigation. The applicants are aged between 18 to 20 years and this fact will have to be kept in mind. The FIR is lodged against unknown persons, however, the prosecution papers definitely show that the present applicants have been identified by the informant and the eye witness. The discovery of the other mobile phones and recovery of them from accused No.4 is another piece of evidence, which will have to be proved by the prosecution, at the time of trial. However, it is to be noted from the discoveries, those have been made and the seizure thereupon that various mobile phones have been seized from the applicants, they are one Twiton mobile phone, MI company Redmi-6 phone, OPPO A-5, Samsung V-19, Realme X-2 (two mobiles), Realme X-3, VIVO X-50 Pro, Micromax A 290, APPLE I-Pod and Samsung Tab. Out of these mobile phones the three Realme company mobiles, VIVO X-50 Pro, Micromax and APPLE I-Pod are recovered from accused No.5. The other mobile phones are recovered from the present applicants. So also one Hyundai Santro Car bearing No.MH-02/AU-8085 has been recovered from present applicant No.1 and it appears that it has been

given to its original owner under the orders of learned Magistrate. Though there appears to be some evidence against the present applicants, taking into consideration their age and the fact that they have permanent place of abode, though they may not be resident of Nandurbar district but they are resident of Maharashtra, they deserve to be released on bail, however, with stringent conditions.

ORDER

1 Application stands allowed.

2 Applicants viz. 1) Sachin Macchindra Rathod, 2) Rahul Macchindra Rathod and 3) Sagar Navnath Chavhan, who have been arrested in connection with Crime No.491/2020 registered with Upnagar Police Station, Nandurbar, for the offence punishable under Section 392, 411 read with Section 34 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity. In case of breach of terms of conditions or indulgence of present applicants in similar crime

henceforth, would give rise to application under Section 439(2) of the Code of Criminal Procedure, 1973 against them and the prosecution would be at liberty to file such application in that event.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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