

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.175 OF 2021

VISHAL ASHOK BHOSALE
VERSUS
THE STATE OF MAHARASHTRA

.....
Ms. S. G. Sonawane, Advocate for applicant.
Mr. N. T. Bhagat, APP for respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th March, 2021

ORDER :-

1. Present bail application has been filed under Section 439 of code of criminal procedure, by original accused No.3 who came to be arrested on 31.08.2020 in connection with Crime No.341 of 2020 registered with Belwandi Police Station, district Ahmednagar for the offence under Sections 395, 120-B of Indian Penal Code.

2. Heard learned Advocate Ms. S. G. Sonawane for the applicant and learned APP Mr. N. T. Bhagat for the respondent-State.

3. It has been vehemently submitted on behalf of applicant that now the investigation is over and the physical custody of the applicant is no longer required by the police authorities. It would take long time to

stand the trial of the applicant. Applicant is 26 year old and no active role is attributed to him either in the First Information Report or by the witnesses in their statements. Nothing has been recovered at his instance during the course of the investigation. Perusal of the FIR would show that there is total suppression of the real incident that had taken place. The informant has not disclosed the said incident completely in which four persons were murdered and offence in respect of that incident has been filed in which the informant in this case is one of the accused. The incident is stated to have taken place on the count of supply of gold at a cheaper rate. Even the informant had suspicion that some untoward incident would take place. The informant had taken chilli powder along with her and also a knife was asked to be taken by her colleagues. This action on the part of the informant and the persons along with her at that time would indicate that they had come with some intention at the said place. There is inordinate delay in lodging the FIR, just to save the skin by the informant. Learned advocate prayed for releasing the applicant on bail.

4. Learned APP strongly submitted that the applicant is not entitled for the release on bail, as he is involved in one of the serious crime. It was represented by one Suresh that the gold is available with them at a cheaper rate and he himself had contacted the informant. In the earlier

round of settlement, the price was fixed though it was clearly stated by the informant earlier that she was not having that much amount for purchase of gold. The fact shows that when the representation was made that the gold is available at cheaper rate, then it would have been collected illegally. Thereafter, the facts disclosed in the FIR would show that informant and her men were called at a lonely place and original accused No.1 had taken them there. It appears from the FIR as well as charge-sheet that there is recovery of passbook of the informant at the behest of the present applicant under Section 27 of the Indian Evidence Act. Therefore, when there is ample evidence against the present applicant, he deserve no sympathy.

5. At the outset, the physical custody of the applicant appears to be not required for the purpose of investigation, as the charge-sheet is also filed. Now, it is required to be seen as to what kind of evidence is collected against the present applicant. There appears to be delay in lodging the FIR, but whether it is fatal or not would be decided by the Trial Court at the end of the Trial. However, fact remains that in connection with the incident, there is offence registered against the informant in this case for the offence punishable under Section 302 read with Section 34 of Indian Penal Code.

6. The informant has come with a case that there was call to Naresh, her distant nephew from one Suresh and Sandip who were unknown to them stating that they have 2 Kg solid gold at a cheaper rate. They told those persons that they do not have that much amount. Thereafter, those persons insisted that they should take half kilogram gold at least. After negotiations, she says that they had decided to go to see the sample. They went by car. Original accused No.1 was also present there with those persons. One gold coin was shown as sample. Informant wanted to check it, so took with her. Though Suresh and Sandip were saying that she should give Rs.25,000/- for that, yet, informant had given only Rs.500/-. She got it checked with goldsmith and found it to be real gold. Then they decided to purchase 250 gm. of gold and collected the amount. After establishing contact, date was fixed for the meeting and purchase of the gold. Informant was alongwith her nephew Naresh, daughter-in-law, Naresh's friend and driver. They were carrying amount of Rs.3,00,000/-. Informant has stated that she was anticipating trouble and, therefore, had taken chilli powder in her purse and asked her nephew to take knife. They were asking Sandip and Suresh about the place of meeting. Informant was asked to come to Visapur phata. Original accused No.1 was then introduced as mother and they were asked to give the amount in her hand. Amount of Rs.2,00,000/- was

given to Suresh. He counted it and then gave Rs.50,000/- to Sandip. Amount of Rs.35,000/- was given to Suresh, who in turn gave it to original accused No.1. Thereafter, Sandip shouted and about 25-30 armed persons attacked informant and others. There was scuffle between those persons and articles from informant were grabbed. The said incident had taken place on 20.08.2020 around 4.00 p.m.; whereas the FIR has been lodged on 24.08.2020.

7. Perusal of the FIR as well as charge-sheet would show that only evidence against the present applicant is the recovery of passbook of the informant by him under Section 27 of the Indian Evidence Act. It is also to be noted that in the identification parade, the present applicant was not identified by the witnesses, therefore, only in respect of discovery under Section 27 of the Indian Evidence Act, the applicant need not be kept languishing in jail. When the applicant was not identified in the identification parade, there are no details as to whether he had used any weapon to cause injuries to anybody, it is certain that no weapon has been discovered from the present applicant. Further, the FIR does not say that the present applicant was present at the earlier time of settlement of price of the gold. Therefore, he deserves to be released on bail. Hence, the following order :-

ORDER

- (I) Application stands allowed.
- (II) The applicant – Vishal Ashok Bhosale, who has been arrested in connection with Crime No.341 of 2020 registered with Belwandi Police Station, district Ahmednagar, for the offence punishable under Sections 395, 120-B of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- (III) He shall not tamper with the evidence of the prosecution in any manner.
- (IV) He shall not indulge in any criminal activity.
- (V) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

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