

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 BAIL APPLICATION NO.182 OF 2021

**CHETAN ASHOK GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondents/State : Mr. R.V. Dasalkar
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 01.07.2021**

PC.:-

This application is filed under Section 439 of the Cr.P.C. for releasing the applicant on bail.

2. Prosecution case is that on 12.05.2019 the informant, who runs a liquor shop closed the liquor shop at 10.00 pm and left for home along with one Bhikan on motorcycle no. MH-20-CP-4295. On the way, one motorcycle came from behind in high speed and the rider tried to snatch the bag of cash from the informant. Both of them fell down. One person wearing white short and another one wearing black shirt and jeans came there. One of them was armed with a knife. He stabbed in the abdomen of Bhikan and also stabbed on his hands two three times. The person wearing black shirt stabbed the informant in the chest. They robbed him of Rupees Four Lakhs. On

13.05.2019, the informant lodged the report. Both these assailants were arrested. During identification parade the informant identified both of them. During interrogation, memorandum statement of co-accused-Sandip Gaikwad was recorded in which role of the applicant was discerned. On the basis of memorandum under Section 27 of the Evidence Act applicant came to be arrested on 18.12.2019 offence under Section 302, 307, 397, 394, 341, 201, 120-B, 109 read with Section 34 of the I.P.C. came to be registered against the applicant.

3. Heard Shri Salunke learned counsel for the applicant and Shri R.V. Dasalkar learned APP for the State.

4. Shri Salunke submitted that the only evidence prosecution could collect against the applicant is the memorandum of co-accused-Sandip Gaikwad. He submitted that this statement is inadmissible in evidence being a confessional statement. He further submitted that a motorcycle has been seized from the applicant. The said motorcycle was gifted to him by his sister-Shraddha Gaikwad. He submitted that Shraddha Gaikwad had taken a loan for purchasing this motorcycle. He submitted that except this evidence prosecution could not collect any evidence to connect the accused with the offence. He submitted that this evidence is too insignificant to connect the accused with the offence.

5. Learned APP Shri Dasalkar submitted that motorcycle which was used in the commission of offence was of Samadhan Salve. He submitted that this motorcycle was deceitfully taken by the applicant from Samadhan Salve and the very motorcycle was used in the commission of the offence. He further submitted that the applicant is the mastermind of the offence. He planned the crime and the accused-Sandip Gaikwad, Ajay Ragade were the executors. He submitted that the applicant has criminal antecedents too. One Crime No.204 of 2016 for the offence punishable under Section 392, 323, 504 read with Section 34 of the I.P.C. is pending against the applicant. He submitted that the applicant got booty of the crime and from that booty he purchased the bullet motorcycle. Though there is time gap of five months between the date of the offence and the purchase of motorcycle. Time gap can be explained as the applicant was on the run once he realised that the police were on his trail. He submitted that application therefore deserves rejection.

6. Name of the applicant was revealed during memorandum of accused-Sandip Gaikwad. Statement of Samadhan Salve has been recorded on 14.05.2019 in which he has stated that his motorcycle no.MH-20-CP-5685 was taken by the applicant mis-representing him that he would bring money and Samadhan Salve should wait there only. This incident was of 6.00 pm.

This very motorcycle was used in the commission of the offence. In view of this, *prima facie* it appears that the applicant is the mastermind of the offence. In such circumstances, I am not inclined to release the applicant on bail. Hence, the application is rejected.

7. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during the trial.

[M.G. SEWLIKAR, J.]