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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 BAIL APPLICATION NO.266 OF 2021

GANESH SHANKAR WAKALE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Bora Satyajit S.
Mr. SB Narwade, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 22nd March, 2021.

PER COURT :-

1. Present applicant has been arrested on 20th January, 2021 by Nava Mondha Police Station, District Parbhani in connection with CR No.28/2021 for the offence punishable under Section 395 of IPC. Present application has been filed under Section 439 of Cr.P.C.

2. Heard Mr.Bora, learned Advocate for the applicant and Mr. Narwade, learned APP for Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that taking into consideration the contents of the FIR, it is certain that the present applicant was not known to the informant, the person, who was caught by him was one Sunil Laxman Shinde and after police had made enquiries with said Sunil Laxman Shinde, involvement of other accused persons is stated to

have revealed. It is also stated in the FIR that on some allegations police apprehended the present applicant also. But at the same time, if we consider the remand report that was submitted before the learned JMFC, recovery of certain articles has been shown from the accused Sunil and Pradeep and nothing is stated to have seized from the present applicant. The applicant is aged 19 years and he is the only earning member of the family and his father has been murdered last year. He has his mother and sister to support. The applicant is ready to abide by the terms of bail.

4. Per contra, learned APP strongly opposed the application and submitted that in fact, the applicant has been apprehended on the same night when the offence has been committed and if the seizure panchanama is seen, then, cutter, one Redmi company black colour mobile and one MI XIOMI Redmi Note-8 company mobile, have been recovered from the applicant. Not only the informant, but one Shaikh Aasef Shaikh Rahim was also robbed by the present applicant and associates. The statement of Shaikh Aasef is on the same line. So also on the same night, the applicant, Raju Jamdade and one Pawan Ambhore were also robbed by these people and, therefore, from the applicant and his associates, two mobile phones; one auto rickshaw; 1 black colour pipe were seized from one Pradip Krishna Kapade and cash of Rs. 1,300/-, one VIVO company mobile was seized from Sunil Laxman Shinde. The offence has been committed in series and,

therefore, when there is ample evidence and all those four persons, whose valuable articles have been snatched, have identified the present applicant and others on the same day. There is ample evidence against the present applicant and, therefore, he does not deserve any sympathy.

5. Perusal of the police papers would show that the modus operandi for all the persons appears to be same. The accused persons appear to be travelling from an auto rickshaw, which is stated to be belonging to one Laxman Kisanrao Sontakke, was given by him to accused Pradip Krishna for plying. All the victims were going by walk at night time, i.e. around 2.00 pm and at different point of time, these accused persons had asked as to whether they want to get in the auto rickshaw. When the informant had refused and preferred to go by walk, he was robbed by others. But, then at that time, when he had seen police coming, he had caught hold of one accused, i.e. accused Sunil. Thereafter the police were taking him as well as the informant to the police station. But, on their way, they found one Shaikh Aasef Shaikh Rahim and he informed the police that he was also robbed. Thereafter, it is stated that after a while, police brought the auto rickshaw along with two persons to the police station and then at that time, informant and Shaikh Aasef identified them as same persons, who had robbed them. They were the present applicant and one Pradip Kapade. Certain articles including the mobile phone of the victim were recovered from these persons. Police papers further

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disclose that one Raju Jamdade and Pawan Ambhore were also proceeding by walk around 12.30 to 1.00 am. They were, in fact, asked by police as to why they were proceeding by walk. But, then they told they could not get auto rickshaw and, therefore, they were walking. But, then they saw the auto rickshaw from which the accused persons are stated to have been travelling. These two persons boarded the auto rickshaw and they were taken at different place and cash and mobile phone of these two persons have been forcibly taken away. Thus, only the age of the accused will not be sufficient to weigh consideration for regular bail; but the manner in which the offence has been committed, is also required to be considered. Further, one of the accused is still absconding. The weapon used in the commission of the alleged crime is an iron-pipe as well as cutter. Under such circumstance, no case is made out to exercise the discretion in favour of the applicant. The application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV