

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.320 OF 2021

SHRIKANT SARJERAO CHAVAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.A. Gaikwad, Advocate for the applicant

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

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 04th MAY, 2021

PRONOUNCED ON : 08th JUNE, 2021.

ORDER :

1 Present applicant came to be arrested on 01.02.2021 by Osmanabad City Police Station, in connection with Crime No.31/2021 dated 24.01.2021 for the offence punishable under Section 392 read with Section 34 of the Indian Penal Code, 1860. He has filed the present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. S.A. Gaikwad for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the investigation is over and charge sheet is filed on 30.03.2021, therefore, further physical custody of the applicant is not required for the purpose of investigation. Perusal of the First Information Report lodged by one Vishnu Ramchandra Mane would show that he runs Ayurvedic shop in Shri Complex in Osmanabad. He stays at Tuljapur and goes up and down to conduct his business affairs. He states that he was robbed by two persons at about 9.00 p.m. on 23.01.2021, when he was proceeding from the service road near Terna Engineering College. Those persons had taken away cash of Rs.21,300/-, his gold chain of 10 grams, watch of Titan company and Vivo company mobile handset. They had also taken his Aadhar card, ATM card, PAN card, Driving Licence etc. He could notice the motorcycle number on which those persons had come as No.MH 25-5845. He has given the FIR against two unknown persons. The prosecution has stated that after the arrest of the applicant he had discovered gold chain and Vivo company mobile under Section 27 of the Indian Evidence Act. In fact, the applicant has been falsely implicated. He has not discovered anything. He is ready to abide by the terms of bail.

4 Per contra, the learned APP strongly opposed the application and submitted that when the discovery has been made by the present applicant, it

has established his connection with the offence. The applicant is a history-sheeter. Offences vide Crime No.21/2021 under Section 379 of the Indian Penal Code and Crime No.38/2021 under Section 379 of the Indian Penal Code are against him. His co-accused is absconding. The number plate, which the informant had seen on the motorcycle used by the applicant, appears to be fake. Report has been given as to under different series where that number is appearing is in whose name and where the vehicle was. Therefore, when he has even used fake number to commit the offence, the gravity of the offence is increased and, therefore, he does not deserve any sympathy.

5 At the outset, it appears that the charge sheet has been filed before the concerned Court on 30.03.2021 and now the case is numbered as Regular Criminal Case No.249/2021. The co-accused has been shown as absconding. The FIR is against unknown persons. The description has been given that the two persons were talking in Marathi and were aged between 22-23 years. Now, it is the prosecution story that with secret informant they got knowledge that present applicant is involved in the crime. Therefore, they had arrested the present applicant and from his house search/property search and seizure panchnama, which appears to be under Section 165 of the Code of Criminal Procedure, 10 gram gold chain and one mobile handset has

been recovered. The said discovery does not appear to be under Section 27 of the Indian Evidence Act. The police papers, which have been produced, do not contain statements of witnesses. The persons, who have been shown as witnesses in the charge sheet, are the panchas and the police witnesses. The receipt from Shri Gajanan Jewellers dated 15.11.2020 appears to be the part of charge sheet, but the said receipt stands in the name of one Prashant Marnur, whereas the informant is one Vishnu Ramchandra Mane. Supplementary statement appears to be not even taken of the informant identifying the property. So also, there appears to be no identification parade held. Therefore, with such kind of evidence the applicant need not be kept behind the bars. He appears to be resident of Hingoli, whereas the offence is stated to have committed in Osmanabad. Therefore, no question of tampering with the evidence of prosecution. Hence, application deserves to be allowed. Accordingly, it is allowed.

ORDER

1 Application stands allowed.

2 Applicant Shrikant Sarjerao Chavan, who has been arrested by Osmanabad City Police Station, in connection with Crime No.31/2021 dated 24.01.2021, for the offence punishable under Section 392 read with Section

34 of the Indian Penal Code, be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

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

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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