

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.401 OF 2021

1. Yogesh s/o Sanjay Aaghav
and Ors. = APPLICANTS

VERSUS

. The State of Maharashtra = RESPONDENT/S

Mr.SJ Salunke, Advocate for Applicants;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 6th May, 2021.

PER COURT :-

1. The applicants have been arrested on 25.2.2021 in connectio0n with CR No.169/2021 by Kotwali police station, District Ahmednagar for the offence punishable under Section 395 of IPC. They have filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. It has been vehemently submitted on behalf of the applicants that the FIR has been lodged against unknown persons. Applicant No.1 is a student in FYBA and taking education in Kalikadevi Art's Commerce and Science College at Shirur (K). Applicant No.2 is a student of BSW 1st year and is taking education in Jalna College of

Social Work, Ramnagar, Jalna and applicant No.3 is a student of B.Sc. 1st Year and is taking education in Kalikadevi Arts, Science and Commerce College, Shirur(K), Dist. Beed. The applicants have no criminal incedents. They have permanent place of abode. The remand report indicates that the applicants have undergone police custody. The material has been recovered and, therefore, their further physical custody is not necessary. Possibility of their false implication cannot be ruled out. They are ready to abide by the terms of the bail.

4. Per contra, learned APP submitted that the manner in which the offence has been committed is required to be considered. The informant is a driver by profession and he is also earning money by putting his car on rent. He himself drives it. He had taken some passengers to Pune on 22.2.2021. Around 4.00 pm, he started his return journey to Ahmednagar. Around 8.00 pm, he came to Maliwada stand, Ahmednagar. There were five male persons, who wanted to hire his vehicle and they asked as to whether the car is available on rent to go to Shirdi. Then he told that he would be going till Rahuri. Those persons agreed to alight at Rahuri and, therefore, they sat in his SIYAZ car. Around 9.00 pm, they came near Nandgaon Phata, Tq. Ahmednagar. At that time, one of the male person complained of vomitting and, therefore, he took the car by the side of the road. Two persons got down and then he himself and three pasengers were in the

(3)

car itself. After a while, those two passengers again sat in the car and when he was about to start the vehicle, a passenger who was sitting behind him, put chilly powder in his eyes. When he started shouting due to the burning sensation, the person behind him tightly caught him and another person put some sharp thing near his neck and threatened that he should keep quite otherwise he would be killed. Thereafter, he was taken on the back-side and one of those persons started driving the car. After a while, he was left in darkness. Those persons had taken away his ATM and Credit Cards. They had also asked him his Password at the point of knife. They took away his SIYAZ car also. After washing his eyes with the help of water bottle, which was thrown by those persons on him, he came at road. He found that he was in front of Deepjyoti hotel. After making enquiry, he found that it was village Supa. In the meantime, he also got the messages on three occasions, stating that his credit card has been swiped. He, thereafter came by a vehicle to Ahmednagar and lodged the report with the police.

5. It is to be noted that from the present applicants, SIYAZ car, credit card and stainless-steel knife, have been recovered, which shows involvement of each of the applicants and, therefore, they do not deserve any kind of sympathy. As the investigation is still incomplete, the applicants need not be released on bail.

6. As the entire facts narrated in the report have been already covered, they are not repeated again here. The manner in which the offence was committed is definitely required to be considered here and for that purpose, merely age of the applicants is not sufficient. The incident has taken place on 22.2.2021 and the present applicants have been arrested at 12.10 am on 25.2.2021. The present applicants cannot dispute and, in fact, they are not disputing the time of their arrest, that too with the seized muddemal, including the car itself. Whether they were moving at such odd hours is a question. Therefore, at this stage, there appears to be some evidence against them. Further, the fact that is required to be noted is that the evidence is very much incomplete. Even an identification parade appears to have not been held. Therefore, if on the basis of the remand report, when it connects the present applicants with the alleged crime and the investigation is incomplete, they do not deserve to be released on bail. Hence, the application is rejected. However, liberty is granted to them to approach the same Court after filing of charge sheet.

(SMT. VIBHA KANKANWADI)
JUDGE