

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

BAIL APPLICATION NO.496 OF 2021

GANESH RAJENDRA GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Deshpande Chaitanya C.
APP for Respondent/State: Mr. N.T. Bhagat
...

CORAM : MANGESH S. PATIL, J.

DATE : 19.06.2021

PER COURT :

This is a successive application for bail under Section 439 of the Code of Criminal Procedure, the earlier having been withdrawn when this Court had expressed its disinclination to grant bail on merits, with liberty to apply for bail afresh after the accused No.4 is arrested.

2. The learned advocate for the applicant submits that the applicant No.4 could not be arrested and is still absconding, however, couple of other accused who have been identified during the Test Identification Parade have been granted bail by this Court and therefore the applicant is hoping to get bail on the ground of parity.

3. In view of such statement, the present application and the request for bail is being considered only on the ground of parity.

4. The substance of the allegations are to the effect that the informant and his father have been running a jewellery shop. They used to

take all the ornaments with them to their home after closing the business in the evening. On the date of the incident, it is alleged that a car with three assailants followed the car of the informant to his house and robbed him of the ornaments which he was carrying in a bag kept in the car. It is further alleged that having heard the commotions informant's friend along with deceased who were riding a motorcycle tried to intercept the car of the offenders and in the process the deceased was shot at and succumbed to the bullet injury. The assailants decamped with the loot.

5. I have carefully considered the arguments of the learned advocate for the applicant as also the learned APP. I have also perused the bail orders passed by this Court in respect of co-accused Dipak Vinayak Kolekar and one Bharat Vishnu Patil. As can be gathered, the role attributed to these two accused is trifle as compared to the role and the material available against the applicant.

6. As can be appreciated, the prosecution is now banking upon the story of there being a conspiracy behind the crime. It is now being alleged that the applicant and the 4th accused who is still absconding are the main accused who had hatched the conspiracy in the latter's house. It is also being alleged that pursuant to the conspiracy the applicant had done a recce and had bought a silver ring for that purpose from the shop of the informant, receipt thereof has been recovered during investigation and even the ring has been recovered. Besides there is a Call Data Record showing that the absconding accused was in the vicinity of the shop while the

applicant was having telephonic conversation with him at the relevant time. There are statements of witnesses to the effect that the applicant is a thick and fast friend of the absconding accused. These are vital circumstances to *prima facie* reveal involvement of the applicant in commission of the crime by hatching a conspiracy with the absconding accused.

7. Needless to state that case of the co-accused who have been granted bail by this Court stands on a better footing as far as their case for bail is concerned. Except their identification during the Test Identification Parade and attributing some role like smashing the car window no further role is attributed to them. Perhaps taking into consideration such clinching material available against the applicant that his earlier application for bail was about to be rejected by this Court while passing the order dated 15.10.2020 in Bail Application No.968/2020, whereupon, the applicant had chosen to withdraw the application and had sought a liberty to apply for bail after the 4th absconding accused Avinash Jagannath Marke was arrested.

8. Whatever may be the reason, even on reconsideration of the matter, the applicant is not entitled to bail on merits as well as on the ground of parity.

9. The application is rejected.

(MANGESH S. PATIL, J.)