

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 669 OF 2021

Atul s/o Ramesh Jogdand

Applicant

Versus

The State of Maharashtra

Respondent

Mr. N.S.Ghanekar, Advocate for the applicant.

Mr. S.W. Munde, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 7th December, 2021.

PER COURT :

1. Heard.

2. Prosecution case is that accused No. 1 Amol Mohite was driving Indigo car. Deceased was carrying with him a bag containing gold ornaments of Rs. 5,00,000/- on two wheeler. Accused No. 1 gave dash to the two wheeler of the deceased. He committed theft of the ornaments and ran away from the spot. Car of accused No. 1 was intercepted at about 40 km.from the spot of the incident. Accused No. 1 tried to run away but he was apprehended by the villagers and handed over to the police with ornaments worth Rs. 5,00,000/-

contained in the bag. Other occupants ran away on seeing the police.

3. The deceased was taken to the hospital where he was declared dead. Thereafter, Prakash Thorat, brethren of the deceased, lodged First Information Report on the basis of which, offence under Sections 302, 397, 394, 120B read with Section 34 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 came to be registered against the applicant.

4. Heard Shri Ghanekar, learned counsel for the applicant and Shri Munde, learned APP for the State.

5. Learned counsel Shri Ghanekar submits that there is no evidence to show involvement of the applicant in the offence. He submits that involvement of the applicant came to be revealed in the confessional statement of accused No. 1. He submits that this statement is not admissible in evidence. Except this, there is nothing to connect the applicant with the offence.

6. Learned APP Shri Munde submits that there are testimonies of the witnesses to show that applicant and others were seen in the company of accused No. 1 who gave dash to the two wheeler of the deceased by Indigo car. He submits that applicant and other accused were staying with accused No. 1. He further submits that the villagers even objected to staying of the applicant and other accused with accused No. 1 as their conduct was suspicious. He submits that this evidence is sufficient to connect the applicant with the offence.

7. Charge-sheet is filed. Role of the applicant is revealed from the confessional statement made by accused No. 1 while recording memorandum under Section 27 of the Indian Evidence Act. This statement is inadmissible in evidence as it is given before the police officer. Except this, there is no evidence to connect the applicant with the offence. Simply because applicant was staying with accused No. 1 cannot be foisted with the knowledge or participation in the alleged offence. Accused No. 1 is directly involved in the offence because he is the person who dashed against the two wheeler of the deceased and committed theft of bag containing gold ornaments. Prosecution could not discern the role of

the applicant in the alleged offence. Therefore, there is no prima facie case against the applicant. I am, therefore, inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand) with one solvent surety in the like amount in connection with Crime No. 053/2018 registered with Kaij Police Station, Tq. Kaij, Dist. Beed, for the offence punishable under Sections 302, 397, 394, 120B read with Section 34 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999.
- iii) Applicant shall deposit the passport, if any, with the concerned police authority.
- iv) Applicant shall not leave the jurisdiction of the Court without leave of the Court.
- v) It is clarified that the observations made in the above order are restricted to the decision of this application only and the Trial Court shall not get influenced by the same and can come to its

independent conclusion during trial.

vi) Application stands disposed of.

(M. G. SEWLIKAR)
Judge

dyb