

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

930 BAIL APPLICATION NO.934 OF 2021

Babasaheb @ Baba s/o. Kolhapure Shinde

Age: 21 years, Occu.: Labourer,

R/o. Viregaon,

Taluka & Dist.Jalna.

(At present in Jail Custody)

..Applicant

(Orig. Accused No.2)

VERSUS

The State of Maharashtra,

Through Police Station Officer,

Hingoli Gramin Police Station,

Hingoli, Taluka & District - Hingoli.

..Respondent

Advocate for Applicant : Shri Swapnil S. Rath

APP for Respondent : Shri P.G.Borade

CORAM : M.G.SEWLIKAR, J.

DATE: 14th October, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0057 of 2021 registered with Hingoli Rural Police Station, Dist.Hingoli, under Section 395 of the Indian Penal Code.

2. Allegations against the applicant are that the informant was at his house in the night of 7th March, 2021. During the night

hours, while informant and his family members were asleep, 7 to 8 persons trespassed into the room of the informant. They were armed with swords. Those unknown persons robbed mother of the informant of gold ornaments. They took key of Almirah from the informant and robbed the informant of cash and ornaments from the Almirah. They also committed robbery of neck-lace, cell phones of the informant and other family members. Thereafter, they fled from the spot. On all these allegations, crime under Section 395 of the Indian Penal Code came to be registered against the applicant.

3. Heard Shri S.S.Rathi, learned counsel for the applicant and Shri P.G.Borade, learned APP for the respondent-State.

4. Shri Rathi, learned counsel for the applicant submits that all the accused have been released on bail except the applicant. He further submits that the learned Sessions Judge framed charge against only five accused persons and the remaining accused have been discharged. He further submits that the role of the applicant and the role of accused Vinod Tamhane is the same and Vinod Tamhane has been released on bail. He, therefore, seeks bail on parity.

5. Shri Borade, learned APP for the respondent-State submits that there is no parity between accused Vinod Tamhane and the applicant. Sword and Mobile phone have been recovered from the applicant. He, therefore, submits that the applicant cannot seek the benefit of parity.

6. It is not in dispute that goldsmith has stated in his statement that applicant and Vinod Tamhane had been to him for selling the gold. He purchased the gold from them and handed over amount to accused Vinod Tamhane. It is not in dispute that both the applicant and accused Vinod Tamhane had been to the goldsmith. Therefore, role of the applicant and Vinod Tamhane is identical. It appears that learned trial Court has rejected the application of the applicant on the ground that applicant has criminal antecedents. Offences under Sections 379 read with Section 34 of the Indian Penal Code and under Sections 324, 323, 504 of the Indian Penal Code have been registered against the applicant. Offence under Section 395 of the Indian Penal Code is not registered against the applicant. Applicant is the resident of Jalna District. Having regard to the role of the applicant and Vinod Tamhane, I am inclined to release the applicant on bail.

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.50,000/- (Rs.Fifty thousand only) with one solvent surety in the like amount, in connection with Crime No.0057 of 2021, registered with Hingoli Rural Police Station, Dist.Hingoli, under Section 395 of the Indian Penal Code.
- iii) Bail Application is disposed of.
- iv) 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.

(M.G.SEWLIKAR)
JUDGE