

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

942 CRIMINAL APPLICATION NO.1855 OF 2020

**KAILASH VISUDEV GUNDIYAL
VERSUS
STATE OF MAHARASHTRA**

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**Advocate for Applicant : Suryawanshi Surendra V.
APP for Respondent State: Smt.R.P.Gaur**

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**CORAM : MANGESH S. PATIL, J.
DATE : 19.01.2021**

PC. :-

In this Application under Section 482 of the Cr.P.C. the applicant who happens to be the original informant is impugning the direction of the Magistrate allowing him to withdraw an amount of Rs.4,50,000/- stolen from him but subject to furnishing a bank guarantee to the tune of Rs.2 lakh, which condition was impugned by him by preferring a revision but in vain.

2] The learned advocate for the applicant submits that the applicant is the informant who had specifically alleged about having robbed of cash. The cash has subsequently been found alongwith the car being used by the accused persons. No dispute is raised by anybody about the right of the applicant to claim the cash. The condition however is cumbersome and requiring him to deposit of an equal amount with the bank to have a bank guarantee. Both the Courts below have failed to appreciate the facts and circumstances in their correct perspective and have unnecessarily imposed such cumbersome

conditon which may be quashed and set aside.

3] The learned A.P.P. opposes the application. She submits that it is only to have some security that the condition has been imposed.

4] I have carefully gone through the papers. There is no dispute about the fact that the applicant is the informant who lodged the F.I.R. about the robbery specifically alleging about having robbed of a cash of Rs.4,90,000/-. He also specifically mentioned the number of the car being used by assailants. It is turned out that the car was subsequently abandoned and even the cash of Rs.4,50,000/- was found therein.

5] The Magistrate has rightly allowed the application of the applicant and directed the amount of Rs.4,50,000/- to be paid to him however, solicited a bank guarantee for an amount of Rs.2 lakhs. One can easily understand the anxiety of the Magistrate to secure the money. However, one cannot lose sight of the fact that there was no claim put up by anybody else. Though the matter is under investigation instead of a bank guarantee mere security with surety would have been sufficient to secure the money.

6] Both the Courts below seem to have taken a very rigid view of the matter. The condition indeed is cumbersome and uncalled for in the facts and circumstances of the case.

7] The application is allowed. The impugned order passed in the Revision is quashed and set aside as also the Condition No.3 imposed by the Magistrate in his order passed in Criminal Miscellaneous Application

No.255/2019 dated 22/3/2019 is quashed and set aside.

[MANGESH S. PATIL, J.]

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