

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1522 OF 2020

Katarsingh s/o Acholsingh Dudhani ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. M. N. Deshmukh and Mr. B. V. Shirwadkar, Advocates for applicant.
Mrs. D. S. Jape, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22nd February, 2021

ORDER :-

1. Present bail application has been filed under Section 439 of the Code of Criminal Procedure by original accused No.1, who came to be arrested on 19.05.2019 by Udgir Police Station, district Latur in connection with Crime No. 186 of 2019 for the offence under Sections 395, 34 of Indian Penal Code.

2. Heard learned Advocate Mr. M. N. Deshmukh with learned Advocate Mr. B. V. Shirwadkar for the applicant and learned APP Mrs. D. S. Jape for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that now the investigation is over and the physical custody of the applicant is no longer required by the police authorities. The trial had started before

the learned Magistrate; however, he has then committed the case to the Court of Sessions after the involvement of five persons was brought on record by the prosecution. Now, it would take longer time to complete the trial. Name of the present applicant is not disclosed in the First Information Report. In fact, perusal of the FIR would show that no such offence of dacoity is transpiring. The learned Magistrate has committed the case to the Court of Sessions hurriedly, before examining other eye witnesses. Applicant is 19 year young boy, who has been languishing in jail since last more than two years. There is no proper identification parade held in this case to show the involvement of this applicant to the crime alleged. Learned Advocate prayed for releasing the applicant on bail.

4. Learned APP strongly submitted that the applicant is not entitled for the release on bail, as he is involved in one of the serious crime. There is ample evidence against the present applicant. Though the recording of evidence had started before the learned Magistrate, yet, after the informant's evidence was recorded in part, on the request of prosecution, as the offence punishable under Sections 395 and 397 of Indian Penal Code was transpiring, the case was committed to the Court of Sessions. No fault can be found in the said order of committal of the case. Golden ornaments worth Rs.1,50,000/- have been stolen by

putting informant and witnesses under fear at knife point. Three persons had entered the house of the informant at night time and therefore, statement to that effect was made in the FIR. However, after perusal of CCTV footage, it was transpired that two persons were standing outside the house guarding the activities. Therefore, in all five persons were involved in the crime. Earlier bail application filed by the present applicant was dismissed as withdrawn by this Court on 18.02.2020. This Court had shown disinclination to grant any relief to the applicant. Now there is no change in the circumstance, hence, this application is not maintainable.

5. At the outset, it is to be noted that the charge-sheet is filed against the applicant and three more persons on 19.08.2019. This Court dismissed Bail Application No.1442 of 2019 filed by the present applicant on 18.02.2020, that means after the filing of the charge-sheet. It has been specifically mentioned in the order that this Court was not inclined to grant any relief to the applicant. Thereafter, the application has been withdrawn. The fact of committal of the case by the learned Magistrate to the Court of Sessions had also taken prior to that order. Order of committal of the case came to be passed on 03.12.2019. Under such circumstance, there is absolutely no change in the circumstance for entertaining this application. On this count itself, this application

deserves to be rejected at the threshold.

6. The order of committal passed by the learned Magistrate cannot be the subject matter in this application. Learned Magistrate thought it fit that since the involvement of five persons is disclosed in the evidence and there are allegations of use of deadly weapon, then the provisions of Sections 395, 397 of Indian Penal Code are attracted and then he has no jurisdiction to try the said case. Further procedure is definitely undertaken by the concerned Courts as per law. That will not give any ground to the applicant to be released on bail.

7. There is *prima facie* evidence against the present applicant. Informant was not knowing the applicant and other accused persons earlier and therefore, naturally their names are not appearing in the FIR. The property in the form of gold ornaments worth Rs.1,50,000/- has been stolen. There is evidence in the form of CCTV footage. Therefore, the manner in which the offence has been committed, weapons used in the commission of the crime, etc. are the points, on which present application deserves to be rejected.

8. Accordingly, the bail application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm