

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 BAIL APPLICATION NO.1425 OF 2021

1. Atish @ Ashish s/o Ashok Khandare
2. Rupesh s/o Ghanasham Jadhav ... Applicants

Versus

The State of Maharashtra ... Respondent

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Advocate for Applicants : Mr. R. S. Deshmukh, Sr. Counsel a/w
Ms. Ashwini Sahastrabudhe i/b Mr. Deshmukh Devang R.
APP for Respondent – State : Mr. A. M. Phule
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.12.2021

ORDER :-

. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Both the applicants have been arrested in connection with Crime No.322 of 2021 registered with Jawahar Nagar Police Station, Dist. Aurangabad for the offence punishable under Section 392 read with Section 34 of Indian Penal Code.

3. It has been vehemently submitted on behalf of applicants that there is admittedly delay of 18 hours in lodging the FIR. The application

filed by the present applicants for their release has been rejected mainly on the ground of alleged criminal history and non arrest of absconding accused. In fact, though applicant No.1 was involved in offence earlier, he has been acquitted and the copies of the judgments in those matters have been produced. Now, the physical custody of the applicants is not required. They are ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that there is criminal history of the applicants and they were the residents near the spot. In fact, the FIR itself makes it clear that when the informant had gone to police station, thereafter, he was accompanied by the police to the place where the offence had occurred and at that time, they found both the applicants at the spot. Recovery of the amount, which has been extorted, is yet to be made and the absconding co-accused are required to be apprehended. Further, it was informed to the Investigating officer that the relatives of the accused are threatening the witnesses and, therefore, possibility of tampering cannot be ruled out. The statements of those eye witnesses are required to be recorded.

5. It is to be noted that the FIR came to be lodged on 10.10.2021 around 21.29 hours on the narration of one Pawan Nagraj Devre. He

disclosed that he along with his brother were coming to Aurangabad in Eicher Truck for delivery of goods. They reached Shital Furniture, Bhanudasnagar between Akashwani to Trimurti Chowk road at about 3.10 a.m. on 10.10.2021 and unloaded certain articles and, thereafter, they were proceeding towards Prem Complex for unloading further articles from Trimurti Chowk to Chetak Ghoda road. At that time, their vehicle was obstructed by a person, who was holding stone in his hand. There were in all four persons. After abusing the informant and his brother, they were dragged from the vehicle. They were manhandled and then amount of Rs.3500/- was forcibly taken from the pocket of the informant. He then says that around 6.00 a.m., he and his brother went to police station. Police persons accompanied them to the spot and two persons were found to the police. They all were taken to police station and, thereafter the names of those two persons were revealed to the informant. He then says that he went to Prem Complex for unloading and after unloading the vehicle, he came back to police station around 3.00 p.m. and, thereafter, his FIR has been recorded.

6. It will not be out of place to mention here that as the facts were to be revealed, the Investigating officer was called and it was asked as to why the FIR was not immediately taken at 6.00 a.m. from the informant. He then states that they wanted to verify the oral complaint. Still a fact

remains that the FIR as well as the original case diary, which was called, is silent on the point when informant, his brother, police persons and the applicants came back to police station from the spot. Even after (it appears that the applicants were taken in custody) without taking prompt FIR, it appears that the informant was allowed to go for unloading of the truck and he could return at about 3.00 p.m. as stated in the FIR. Even if for the sake of argument it is accepted as it is, then atleast orally at this stage, the Investigating officer is not able to explain why it took for the police to register the FIR at 21.29 hours on the said date. Even at this *prima facie* stage a statement can be made and it will have to be in fact proved by the police at the time of trial that from 3.10 a.m. to 6.00 a.m., the applicants were at the same spot, but then prosecution has not stated for what purpose, they were there for about 3 hours. Whether such kind of activity is expected from a harden criminal is also required to be considered by the Trial Court at the time of assessment of the evidence.

7. As regards the criminal antecedents of the applicant No.1 is concerned, there are judgments of acquittal produced and, now, the prosecution has not stated that apart from those, there are some other offences pending against him. Statement without evidence made by the Investigating officer cannot be considered. Further, the non arrest of

absconding accused cannot be a ground for refusing to release the applicants. Under such circumstance, case is made out to release the applicants on bail. Hence, the following order is passed :-

ORDER

- 1) Application stands allowed and disposed .
- 2) Applicant No.1 – Atish @ Ashish s/o Ashok Khandare and applicant No.2 – Rupesh s/o Ghanasham Jadhav, who have been arrested in connection with Crime No.322 of 2021 registered with Jawahar Nagar Police Station, Dist. Aurangabad, for the offences punishable under Section 392 read with Section 34 of Indian Penal Code, be released on P .R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- 3) The applicants shall not commit any kind of offence.
- 4) They should remain present before the Investigating Officer on every Monday, Wednesday and Saturday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.
- 5) They shall not tamper with the evidence of the prosecution in any manner.

- 6) Liberty is granted to the prosecution to make application for cancellation of bail, if applicants or their relatives indulge in activity of tampering with the evidence of the prosecution.
- 7) The applicants shall co-operate with investigation.
- 8) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm