

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1001 BAIL APPLICATION NO.1441 OF 2021

RAHUL BALU KHILLARE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.M. Kamble, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22th DECEMBER, 2021

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 by the applicant, who has been arrested in connection with Crime No.501/2021 dated 14.07.2021 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 392 of the Indian Penal Code, 1860. Applicant has been arrested on 06.10.2021.

2 Heard learned Advocate Mr. S.M. Kamble for the applicant and learned APP Mrs. V.N. Patil-Jadhav for the respondent.

3 Perusal of the First Information Report would show that one Satish Namdeo Vidhale, who is Medical Practitioner by profession was proceeding along with his family members from Amravati to Pune via Aurangabad-Ahmednagar road. Their vehicle got punctured in the early hours of morning. Their driver was changing the wheel, at that time, suddenly two persons came and abused them in Hindi language and threatened them by pointing knife towards them. They extorted amount of Rs.10,000/- in cash, two tolas of gold bangles and three mobile phones. It has been further stated by the informant that they went to Police Station and at that time, the police had shown them certain photographs of the accused persons, who were on record. Informant identified one Amol Shelar and Dnyaneshwar Deokar, R/o Mukindpur, Tq. Newasa and thereafter while recording his First Information Report it has been registered against those two identified persons.

4 The prosecution story appears to be that the mobile phone IMEI numbers were tracked and it was found that the mobile phone of driver of the informant got activated. It was traced and it was found to be with the present applicant. It is the prosecution story further that the said mobile phone was recovered from the present applicant and then he gave name of accused No.2 Sachin Thaksen Kale and another mobile snatched at the time

of incident was found from accused No.1. The police papers would show that statements of witnesses have been recorded, so also, their supplementary statements have also been recorded. It will not be out of place to mention here that when the First Information Report was against two other persons, who were stated to be identified by the informant from the record of the police, how it could have been other two persons, who are stated to be the offenders. Under such circumstance, the Investigating Officer was called by this Court along with the record, kept by the police. Learned APP, under instructions from Investigating Officer, submitted that as the mobile phone was found with the accused-applicant, he has been arrested. This kind of investigation without cross checking the facts is sheer abuse of the power of the police. After the accused-applicant was arrested, the Investigating Officer has not even taken care to have Identification Parade. On what basis then the supplementary statements have been recorded, is a surprising fact. Still in the supplementary statement the informant and his family members are stating that though they had taken names of two other accused persons, it has been transpired in the police investigation that the present accused persons are the offenders. The Investigating Officer has not considered the possibility as to the other facts for possession of the mobile phone with the applicant. Even he could have purchased or taken that mobile phone from the original accused persons. The fact now remains is, as per the First

Information Report, the offence has been committed by two other persons because those persons have been identified on the basis of the police record itself. The mobile phones have been allegedly recovered from the present applicants. Both these accused are from Waluj, Tq. Gangapur, Dist. Aurangabad. Accused No.2 Sachin is 38 years old person and present applicant is only 18 years old. From 06.10.2021 till today no other piece of evidence has been collected and surprisingly there is a letter written by the Investigating Officer to the informant that the investigation is complete and charge sheet has been forwarded. No doubt, it does not bear any date. That means, for the Investigating Officer the investigation is complete.

5 Section 173 of the Code of Criminal Procedure prescribes for report of Police Officer on completion of investigation. Satisfaction regarding the material, that is, collected from the view of the Investigating Officer is important step before such report/charge sheet is forwarded.

6 At the costs of repetition, it can be said that if we consider the evidence, that has been collected right now, except the recovery of one of the mobiles from the present applicant there is nothing. The Investigating Officer was so careless that he has not even thought that there should be Identification Parade. Informant, his family members as well as driver employed by him on the journey do not claim that they were knowing the

present applicant. Taking into consideration the fact that the applicant is only 18 years old boy and with this kind of evidence the Courts below ought to have exercised their discretion. What is required to be impressed on the minds of the Magistrates and learned Sessions Judges/Additional Sessions Judges that the accused persons also have the Constitutional right. Courts are there to protect the Constitutional rights of the citizens. No doubt, these rights are not unfettered or unrestricted. But unless and until there is sufficient evidence, their liberty cannot be curtailed. The well settled principle of law that, bail is rule and jail is exception, appears to be forgotten by the District Judiciary, at many times.

7 For the above said reasons the application deserves to be allowed and in view of the evidence collected copy of this order be given to District Superintendent of Police for his information. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant viz. Rahul Balu Khillare, who has been arrested in connection with Crime No.501/2021 dated 14.07.2021 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 392 of the Indian Penal Code, 1860, be released on P.R. of

Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

6 Registrar (Judicial) to send a copy of this order to District Superintendent of Police, Ahmednagar for information.

(Smt. Vibha Kankanwadi, J.)

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