

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1261 OF 2020

1. Vilas Subhash Chavan

2. Dinesh Nanan Lute

... Applicants

Versus

State of Maharashtra

... Respondent

Smt. Rushita Jain, for the Applicants.

Smt. P. P. Shinde, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 26th October, 2021.

PRONOUNCED ON : 15th November, 2021.

PC:-

. The present application has been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No. 08 of 2019 registered with Khed Police Station, District-Ratnagiri, for the offences punishable under Sections 394, 397 r/w 34 of the Indian Penal Code and Sections 3(1) 181, 21(20)/177 of the Motor Vehicles Act, 1988.

2 It is the case of prosecution that on 16/01/2019, the informant was taking his truck bearing registration No.GJ15-XX-4622 from Vapi (Gujrat) to Goa. At the spot of incident he parked his vehicle in order

to have bath in a river. According to prosecution, after having a bath while informant was performing pooja in the cabin of his truck, the applicants- accused threatened him to get down and hand over all the valuables. One of the applicant then gave a blow of knife on the abdomen and also caused injury on the wrist of the hands. It is further alleged that they forcibly took Rs.5000/- and mobile and fled away on a motorcycle. The informant accordingly filed the FIR.

3 Smt. Jain, learned Counsel for the applicants, submits that everything has been recovered. Investigation is over and chage-sheet has been filed. The applicants are 20 years old and they are in jail for more than 1 year and 11 months. Since they are sole bread winner of their family and are permanent residents of Taluka Phaltan and Khed respectively, they be released on bail.

4 Smt. Shinde, learned APP, on the other hand, opposed the submissions by contending that not only the applicants caused serious injury to the informant while committing the offence of robbery but are also having antecedents. In such circumstances, there being no merit in the application, same be rejected, argued learned APP.

5 Perused the investigation papers. FIR was lodged by informant against the unknown persons on 16/01/2019. It appears that test identification parade was carried out on 31/01/2019 wherein the informant identified both the applicants-accused. It is surprising to note from the memorandum of test identification parade that identical dummies were used at the time of test identification parade of both the applicants. Prima-facie, the informant had opportunity to see the said dummies first time at the time of identification of applicant-accused Vilas Subhash Chavan. The same dummies were used at the time of identification of applicant-accused Dinesh Nanan Lute. Similarly, it is also worth mentioning that the description of the applicants-accused were not at all given at the time of lodging of the report. Therefore, it appears that the so called test identification parade is not aboveboard.

6 So far as criminal antecedents are concerned, admittedly both the applicants are facing criminal proceedings. However, the criminal antecedents must be looked vis-a-vis the nature of the offence alleged in the present crime. I have already pointed out the nature of evidence appearing on record in respect of present offence. Keeping that aspect in mind, in my considered opinion, much significance can not be attached to the criminal antecedents of the applicants as is claimed by the learned APP.

7 Further, the applicants-accused are in their early 20's and the trial may take a considerable time. In such circumstances, I am inclined to allow the application. Hence, the following order.

ORDER

(i) Applicant No.1 Vilas Subhash Chavan and Applicant No.2. Dinesh Nanani Lute shall be released on bail in C.R. No. 08 of 2019 registered with Khed Police Station, Ratnagiri, on their executing P .R. bond in the sum of Rs.20,000/- each, with one or two sureties in like amount.

(ii) The applicants shall not indulge in similar kind of activities as is lodged in the present case.

(iii) The applicants shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iv) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(v) Parties to act on copy of this order duly authenticated by the Sheristadar of this Court.

(vi) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)