

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2913 OF 2021**

Abhijit @ Abhijitya Aparisha Bhosale	...	Applicant
Versus		
State of Maharashtra	...	Respondent

Mr. Priyal G. Sarda, for the Applicant.

Mr. Ameet A. Palkar, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th October, 2021.
PRONOUNCED ON : 28th October, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 59 of 2018 registered with Karmala Police Station, District- Solapur for the offences punishable under Section 392, 34 of the Indian Penal Code and Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act.

2 It is the case of prosecution that on 26th January, 2018 the informant along with his wife and brother-in-law were proceeding towards Nimgaon (३) in his Swift Dzire Car bearing registration No. MH-

12-MB-4561. According to prosecution, after passing half km. from village Pangare, the informant heard sound of pelting of stones on the car and, therefore, he stopped the car. When informant and family members got down, four unknown persons came near the car, beat them and forcibly removed gold ornaments from the person of informant's wife, mobile handsets, cash amount of Rs.25,000/- and thus in all they took away articles worth Rs.1,10,000/-. The informant accordingly lodged the report.

3 Mr. Sarda, learned Counsel for the applicant, submits that the name of the present applicant is nowhere revealed in the FIR. No test identification parade till today is carried out to establish the identity of the applicant. The only so called evidence against the applicant is the alleged recovery of gold beads at the instance of applicant and that to from an open space which appears to be concocted and improbable. Thus, for all these reasons the application deserves to be allowed, argued learned Counsel.

4 Mr. Palkar, learned APP, on the other hand, fairly submits that except disclosure statement of applicant recorded under Section 27 of the Evidence Act, there is no other positive evidence to connect the

accused with the alleged offence. However, learned APP submitted that there are criminal antecedents and in such circumstances, application should not be allowed.

5 FIR admittedly is against four unknown persons. Even supplementary statement of the informant recorded after a week of registration of FIR nowhere shows the involvement of the present applicant. Rather, it is again reiterated that there were four unknown persons.

6 It is also an admitted position that no test identification parade so far is carried out till today so as to establish the identity and involvement of the present applicant in the alleged offences. Therefore, it cannot be *prima facie* opined with certainty that the applicant was involved in the commission of the alleged offences.

7 All that prosecution is relying on is the recovery of ten gold beads at the instance of applicant under Section 27 of the Evidence Act. I have gone through the alleged disclosure statement of the applicant recorded under Section 27 of the Evidence Act. It appears that there was recovery of ten gold beads at the instance of the applicant from

bushes which was concealed under a stone. This circumstance is also not free from blame inasmuch as the recovery was effected from the open space which is accessible to one and all.

8 Thus, having regard to the nature of evidence collected by the investigation machinery, in my considered opinion, the present application deserves consideration. Hence, the following order.

ORDER

(i) Applicant- Abhijit @ Abhijitya Aparisha Bhosale shall be released on bail in C.R. No. 59 of 2018 registered with Karmala Police Station, District- Solapur, on his executing P .R. bond in the sum of Rs.25,000/- with one or two sureties in like amount.

(ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

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

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

(V. G. BISHT, J.)