

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

CRIMINAL BAIL APPLICATION NO.1539 OF 2020

Rama Dattaram Shivalkar Applicant

versus

State of Maharashtra Respondent

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- Mr.P. D. Dalvi, Advocate for Applicant.
- Ms.A. A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 01st APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.167/2019 dated 29/10/2019 registered with Ratnagiri Police Station, under sections 394, 398, 75 r/w 34 of the Indian Penal Code. The Applicant was arrested on 11/11/2019 and since then he is in custody.

2. Heard Mr.P .D. Dalvi, learned counsel for the Applicant and Ms.A.A. Takalkar, learned APP for the State.

3. The FIR is lodged on 29/10/2019 by one Pratibha Parshuram Shivalkar. She has stated that on 28/10/2019 at about 08.15 p.m. she herself, her husband and her husband's brother were in the house. The brother-in-law Kamlakar went out to answer nature's call. The informant heard his shouts. Therefore she came out in the outer room. She saw that two persons who had covered their faces with black cloth entered their house. One of them showed knife to the informant's husband. The other one pushed her inside the house. He snatched her Mangalsutra and then both of them left that house. Her brother-in-law was found sitting outside in frightened state. The informant saw two pieces of her Mangalsutra on the way. The FIR mentions that the offenders had taken away Mangalsutra worth Rs.16,000/- from her. The FIR specifically mentions that the offenders were unknown. They were between age group of 25 to 30 years and they had covered their faces with black cloth. The informant had stated that she had not seen the accused any time prior to the incident.

4. Learned counsel for the Applicant submitted that the Applicant is real nephew of the first informant and her husband. Therefore if he had entered the house, the informant would have immediately recognized him. The FIR itself mentions that she had heard the offenders talking with each other. Therefore even if their faces were covered, the informant and her husband could have recognized him. He submitted that since it is the case of informant that the faces of offenders were covered, therefore there was no question of identification of the offenders. He further submitted that there is only one solitary piece of evidence against the Applicant in the form of statements given by Sanjay Atmaram Gothankar. He was a jeweller and he has stated that the Applicant and his brother had come to his house on 29/10/2019 at about 11.45 a.m. and had sold a Mangalsutra. This witness had melted that Mangalsutra and had made bar of gold. Learned counsel for the Applicant submitted that his statement was recorded after arrest of the Applicant on 11/10/2019. Thus there is hardly any evidence against the present Applicant. The quality of the evidence is very weak. He

further added that the Applicant himself is 52 years of age. Therefore the informant's case that the offender's age group is between 25-30 years, in fact exonerates the Applicant.

5. Learned APP opposed this application. She submitted that at this stage there is no reason to discard the statement of Sanjay Gothankar. She submitted that it is too much of a coincidence that on the very next date, the Applicant had brought a Mangalsutra to this shop for selling it.

6. I have considered these submissions. The informant's case is corroborated with some variance by her husband Parshuram and Kamlakar. Both of them had given slightly different description of the clothes worn by the offenders and the colour of the cloth covering their faces. Their statements are also similar to the statements of neighbours Dilip Bhikaji Bhatkar and Vivek Dilip Bhatkar etc. However, these two witnesses Dilip and Vivek had not seen the offenders. They had only reproduced what the informant had told them.

7. It is obvious that the identification of the offenders would be very difficult because they had covered their faces. The informant has categorically stated that the offenders were unknown. This has to be considered in the light of submissions made by learned counsel for the Applicant that the Applicant was informant's nephew. There is difference in age group of offenders and the Applicant. The only incriminating evidence is statement of Sanjay Gothankar. According to him, the Applicant and his brother had sold Mangalsutra on 29/10/2019. However, statement of this witness, was recorded u/s 161 of Cr.P.C. on 12/11/2019 and his statement u/s 164 of Cr.P.C. was recorded on 19/11/2019. Both these statements are recorded after the Applicant's arrest on 11/11/2019. Therefore at this stage, the evidence against the Applicant is very weak. He is in custody since 11/11/2019. The investigation is over. Therefore I am inclined to grant bail to the present Applicant.

8. Hence, the following order :

ORDER

- (i) In connection with C.R.No.167/2019 dated 29/10/2019 registered with Ratnagiri Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)