

3. Heard Mr. Sachin Deokar, learned Counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

4. The F.I.R is lodged by one Mahadev Lonkar on 28th March 2017. He has stated that between the night of 27th and 28th March 2017 at about 3.30 a.m., he was planning to go to Phaltan. He opened the door of his house at 3.30 a.m. He saw that three persons were standing outside. Two of them, suddenly entered in his house. The third one waited outside. The informant raised shouts. Those three unknown persons, picked up a bag kept in the house and took it away. There were gold ornaments worth Rs.97,500/- and a mobile phone in that bag including. While going, they locked the door from outside. The informant raised shouts. The neighbours came there and rescued him and thereafter, he lodged the F.I.R.

5. The investigation was carried out. During the investigation it transpired that the offenders had committed robbery in two more houses. The statement recorded of one Kavita Kamble shows that at around 12:45 a.m., three unknown persons entered her house. Her family members were threatened.

They removed Rs.4,000/-, a mobile phone and ornaments worth Rs.4,500/- worn by her. She has given the description of the three offenders.

. Apart from her, the accused also entered the house of one Anita Jagdale and from her house a mobile phone as well as gold and silver ornaments were taken away forcibly by the offenders.

6. During the investigation, supplementary statement of the first informant was recorded and at that time he gave more details about the incident. This time, he stated that the persons who had entered his house had given blows with blunt side of sickle on the informant's son Sagar. The informant's wife was also given kick blows. His wife's and sons's statements support his version.

. His further statement recorded on 26.7.2017 shows that he was told by the police that 12 accused had committed this offence. However, no test identification parade was conducted to enable him to identify the present Applicant.

7. Learned Counsel for the applicant submitted that there was no incriminating material against the present applicant at all.

8. The learned APP could not controvert this position. However, she submitted that there was MCOCA case pending against him.

9. With the assistance of both the learned Counsel, I have perused the chargesheet and investigation papers. They merely contain statements supporting the informant's case that robbery was committed. However, there is no circumstance in the nature of test identification parade or recovery of any incriminating articles against him.

10. There is a memorandum statement of co-accused Sagar Pawar recorded on 20.7.2017 under Section 27 of the Evidence Act. In that memorandum statement, names of his 11 co-accused, including the present Applicant, were mentioned as the persons who had committed that offence. Pursuant to this statement, the articles worth Rs.79,100/- were recovered from a jewelers shop. However, the portion of the memorandum statement, which was in

the nature of confession of having committed the crime, is not admissible. Thus, in the portion where the Applicant's name appears was inadmissible portion of the memorandum statement. Thus, there was absolutely no evidence against the present Applicant in the entire charge-sheet.

11. In spite of this position, the learned Additional Sessions Judge, Baramati, vide his order dated 29.8.2020 passed below Exhibit-8 in Sessions Case No.160/2017 before him, rejected the Applicant's application for bail. The reasons given by learned Judge were that the nature of the offence was very serious, the charge was framed, the Applicant's presence would be required during the trial. The learned Judge observed that if the Applicant was released on bail, he would abscond and would threaten the informant and prosecution witnesses. Based on these reasonings, his application was rejected.

12. The approach of learned Additional Sessions Judge in refusing the bail to the present Applicant is absolutely wrong. If there is no material against the accused in the entire chargesheet then it was wholly unjustified to deny him bail on these

reasonings. The most important aspect for consideration of prayer for bail is the material collected against the accused showing his involvement in the crime. In the present case there is not a single piece of incriminating evidence against the present Applicant.

13. In this view of the matter, further custody of the Applicant during pendency of the trial is not justified and he deserves to be released on bail. Hence, the following order.

ORDER

- (i) In connection with C.R. No.165/2017 registered at Daund Police Station, Dist. Pune, the Applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned Police Station once in a month till conclusion of the trial against him.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)