

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

CRIMINAL BAIL APPLICATION NO.78 OF 2020

1. Pravin Sudam Nikalje
 2. Rahul Gopal Vagri
- Applicants

versus

State of Maharashtra

.... Respondent

.....

- None present for Applicant.
- Mr.Ameet A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicants are seeking regular bail in connection with C.R.No.538/2019 registered with Goregaon Police Station, dated 25/10/2019, under sections 394 r/w 34 of the Indian Penal Code. The charge-sheet is already filed on 25/10/2019 and and since then they are in custody. Investigation is over.

2. Nobody appears for the Applicant. Therefore I am deciding this application with the assistance of learned APP. I have perused the charge-sheet annexed to this application.

3. The FIR is lodged by one Islam Shaikh on 25/10/2019. He has stated that he had gone to attend his work on 24/10/2019 in the night. After supplying the goods by his tempo, he parked his tempo near fish market, Goregaon on 25/10/2019 at 03.30 a.m. While he was walking towards his house, two unknown persons came on a scooty. They stopped him on the pretext of asking for Match box. Both of them got down. They forcibly took away Rs.3,000/- which he was carrying. When he opposed, one of them picked up a paver block lying on the road and gave a blow on his head. The informant raised shouts. However, both of them went away. On this basis, FIR is lodged.
4. Heard Mr.Ameet Palkar, learned APP for the State. He submitted that there is sufficient material against the present Applicants in the charge-sheet in the form of recovery, but no identification parade is held.

5. I have perused the charge-sheet. The charge-sheet contains recovery pachanama dated 26/10/2019, wherein the Applicant Pravin Nikalje gave statement showing his willingness to point out the place where he had kept the amount and the scooty. Pursuant to that statement, Rs.2,000/- were recovered from the pant kept in his house. The scooty was parked behind his house and the paver block used in the offence was lying on a road near bus stop.
6. There is another statement of one Akash Raju Mane. He had seen the incident. In the incident itself he had questioned the accused. His case is that he confronted one of the offenders and asked him about the informant's mobile phone. He in fact searched his person and took out mobile from his pant pocket and returned it to the informant. After that both of offenders came back after some time with iron rod and they were asking for the informant. His statement further mentions that police pointed out those two offenders to this witness Akash and he had identified both of them. The injury certificate of

informant shows that he had suffered one simple injury on his right temporal region. Apart from this circumstance, there is nothing in the charge-sheet.

7. As far as recovery is concerned, finding of Rs.2,000/- in the Applicant's house is hardly incriminating. Paver block was found on the road. Therefore that circumstance is also not incriminating. If the Applicant had a scooty, that by itself is not an incriminating circumstance.

8. As far as statement of witness Akash Mane is concerned, his story is not reflected in the informant's case. Even otherwise his statement shows that the offender had not fought with this witness. They had allowed him to search them. Secondly these offenders were shown to this witness by the police. This can hardly be treated as proper identification. The Applicants on the basis of statement this witness are in custody since 26/10/2019. The trial is not likely to commence soon enough. Considering this doubtful piece of evidence and also

taking into consideration, long detention of the Applicants in custody during pendency of their trial, I am inclined to grant bail to both the Applicants.

9. Hence, the following order :

ORDER

- (i) In connection with C.R.No.538/2019 registered with Goregaon Police Station, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.
- (ii) Since nobody appeared for the Applicants, office to intimate this order to the Applicants through Jail Superintendent, with the help of the Investigating Officer.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)