

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

CRIMINAL BAIL APPLICATION NO. 198 OF 2021

Dhimant Chotalal Chouhan

... Applicant

versus

The State of Maharashtra

.... Respondent

.....
Mr. Satyaram R. Gaud, for the Applicant.

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

.....

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JULY, 2021

(Through Video Conferencing)

P.C. :

1. The applicant is seeking bail in connection with C.R.No.251/2020 registered with M.I.D.C. Police Station, Mumbai on 22nd April 2020 by one Raj Kumar Luthra under Sections 454, 457, 380, 109, 120(B) read with 34 of the Indian Penal Code (for short "IPC").

2. Heard Mr. Satyaram R. Gaud, learned Counsel for the applicant and Mr. A.A. Palkar, learned APP for the State.

3. The case of the prosecution is that the informant was having his business at Gala No.110 at Niraj Industrial Estate, Mahakali Caves Road, Andheri (East), Mumbai. The Head Office of the company is at New Delhi. The informant's company was in the business of casting, filing, polishing and Wax setting of diamonds and jewellery. The workers from the company were residing at Virar, Nalasopara, Goregaon and Andheri, etc. Due to spread of pandemic, the workers had requested for two days holiday. On 20th March 2020 and 21st March 2020 the workers were given holidays. The premises were closed on 19th March 2020 at about 8.00 p.m. Thereafter, lock down was imposed from 22nd March 2020. On 22nd April 2020 the first informant visited his premises in Gala No.110. He found that the articles were scattered on the floor. The DVR of CCTV camera was missing. The gold powder weighing about 440 grams from grinding machine valued at about Rs.15 Lakh was missing. Gold ornaments, diamonds, diamond jewellery were also missing. The safe vault was broken open by using a cutter. On this basis, F.I.R. was lodged against unknown persons.

4. The informant's supplementary statement was recorded

on 24th April 2020. In that statement, he mentioned that the cement roof was broken by the thieves for making entry into the gala. He gave further description of missing articles. According to him, the stolen property was worth Rs.7,09,48,992/- consisting of loose diamonds, diamond studded jewellery and gold, apart from other articles.

5. Different accused were arrested. The present applicant Dhimant Chouhan was arrested on 28th April 2020. The investigation was carried out and the charge sheet is filed. Since his arrest, the applicant is in custody.

6. Learned Counsel for the applicant submitted that the co-accused Irfan Mulani, Santosh Rathod and Shankar Yesu who were similarly placed are granted bail by this Court (CORAM : PRAKASH D. NAIK, J.) by orders dated 12th March 2021 and 25th March 2021 passed in Criminal Bail Application Nos.1332/2021, 207/2021 and No.2055/2021. He submitted that the applicant's role is lesser. The property recovered at the instance of released co-accused Irfan is much more than the property recovered at the

instance of the present applicant. He further submitted that apart from the ground of parity, the applicant has good case on merits that there is nothing to show that the applicant had taken part in the robbery.

7. Learned APP, opposed this application. He submitted that the offence is serious and there is recovery of ornaments at the applicant's instance.

8. I have considered these submissions.

9. The only evidence against the present applicant is about the recovery of ornaments worth Rs.7,27,854/-. This recovery was effected at his instance from dickey of a scooty. Interestingly, the police were already having possession of the keys of that dickey. The police had seized that key from the co-accused Irfan when he was arrested. Therefore, the scooty was thus under Irfan's control. It is apparent that the police were having knowledge of that particular scooty. The recovery however, is shown at the instance of the present applicant. This circumstance is therefore little doubtful, as far as the prosecution case is

concerned. As rightly pointed out by Shri Goud, the co-accused Irfan had also given a statement pursuant to which recovery of ornaments worth Rs.14,22,845/- was effected from his own house. Therefore, that particular aspect is more incriminating than the piece of evidence against the present applicant. Since Irfan is already granted bail on the ground of parity and since the recovery at the applicant's instance itself is little doubtful, the applicant deserves to be released on bail. He is already in custody since 28th April 2020.

10. Learned APP, on instructions, states that there are no criminal antecedents against the applicant. Therefore, I am inclined to grant bail to the present applicant.

11. Hence, the following order.

ORDER

(i) The applicant is directed to be released on bail in connection with C.R.No.251/2020 registered with M.I.D.C. Police Station, Mumbai on executing

P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount;

(ii) The applicant shall report to the concerned Police Station on 1st Saturday of every month between 11.00 a.m. to 1.00 p.m. for a period of one year from today;

(iii) The applicant shall not tamper with the evidence;

(iv) The applicant shall attend the trial Court regularly unless exempted by the Court;

(v) The Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)