

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.374 OF 2020**

Avinash Bajrang Mothe	...Applicant
V/S.	
The State of Maharashtra	...Respondent

Mr. Satyavrat Joshi, Advocate for Applicant.
Mrs. J. S. Lohokare, APP for State – Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATED : 16th FEBRUARY, 2021.**

P.C.

1. The Applicant is seeking his release on bail in connection with C.R. No.206 of 2019 dated 15th June 2019, registered at Rajarampuri Police Station, District Kolhapur, under Sections 395, 364(A), 341, 427, 120B of the Indian Penal Code. The Applicant was arrested on 17th June 2019 and since then, he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Mr. Satyavrat Joshi, learned Counsel for the Applicants and Mrs. J. S. Lohokare, learned APP for the State.

3. The prosecution case has unfolded through the F.I.R. lodged by one Chintamani Pawar. He has stated that he was working with one Vikas Kadam, who was a Jeweller, having shop at Bhendi Galli, Kolhapur. Vikas Kadam was running his business with his partner Kishor Shinde. The informant, one Sushant Kadam and Sagar Mane were working with the owners. Sagar and Sushant were drivers. They had an Ertiga Suzuki Car. On 12th June 2019, the informant was sent to Mumbai for collecting gold and other articles. The firm had an office in Mumbai. In the night, they started from Mumbai. They were carrying some bags collected at Mumbai. They also had a bag containing gold. At around 4.30 a.m., they reached Kolhapur. Their car was intercepted by a Swift Car. Some persons got down from that car. They weilded a knife. They entered the informant's car forcibly. Informant and his companions were taken at some distance. One blow with a knife was given on Sushant's head. The assailants took away their identity cards. The informant and his two companions were made to remove their clothes and were left at some distance. They sought help and then informed

the Police. Thereafter, the F.I.R. is lodged.

4. The offenders had taken away the car. The car was having cash amount and gold. The allegations in the F.I.R. are that the entire worth of stolen articles including cash was more than Rs.1 Crore, 18 Lakh. On this basis F.I.R. was lodged.

5. Subsequently, supplementary statement of the informant was also taken. In that statement, he stated that his employer told him that there was a secret compartment in that car and there were Rs.2 Crores cash and 1 kg of gold kept in that secret compartment. The investigation was carried out. As per the investigation, three accused were found in the Swift Car. The present Applicant was one of them. He was arrested on 17th June 2019. The circumstance against the present Applicant was that at the time of his arrest, he was found with Rs.8 Lakh cash, 498 grams of gold and one mobile phone.

6. Besides that there was an identification parade held on 29th August 2019, in which he was identified by the

informant. All the three witnesses have identified the Applicant.

7. Shri. Joshi submitted that the evidence of identification parade is doubtful because it is was conducted in violation of the guidelines prescribed in that behalf. He submitted that there was a delay in conducting the identification parade. The Applicant was arrested on 17th June 2019 and the test identification parade was held on 29th June 2019. He submitted that at the same parade, three accused, were made to participate. Which was in violation of the criminal manual and the guidelines prescribed in that behalf. He submitted that the recovery of the gold and cash cannot be directly connected to the offence.

8. The learned APP opposed this Application. She submitted that the gold and cash were recovered immediately. He was carrying the amount and gold with him on his person. He was arrested within three days of the offence. He was found in the Swift Car. She submitted that the effect of violation of guidelines can only be tested during trial.

9. I have considered this submissions, there is some substance in the submissions of the Mr. Joshi that three suspects were made to participate in one parade. However, without going into that aspect of the matter and leaving aside the test identification parade, there is still sufficient material against the present Applicant. The Applicant was arrested on 17th June 2019. He was found carrying cash and 498 grams of gold. He was found in the Swift Car. Though the number Swift Car was not given in the F.I.R., he was found in company of other accused at the time of his arrest. The offence is quite serious. There is a presumption under Section 114 of Evidence Act given in illustration (a) of the said Section. That presumption is applicable at this stage also.

10. Considering the gravity of the offence and sufficiency of the evidence against the present Applicant. No case for grant of bail is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)