

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1276 OF 2021

DHARMENDRA SUKANA KALE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Nilesh Patil, Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th NOVEMBER 2021
PRONOUNCED ON : 9th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.256 of 2019 registered with Police Station Islampur, Sangli, for offences punishable under Section 395, 342, 120(B) of the Indian Penal Code (IPC).

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2 It is the case of prosecution that on 1st April 2019 in the wee hours five unknown persons entered into the house of informant with a view to commit dacoity, armed with weapons and by brandishing knife robbed the informant and family members of ornaments (gold and silver), cash amount and mobile worth Rs.3,68,000/-. The informant, accordingly, lodged the report.

3 Mr.Nilesh Patil, learned counsel for the applicant, invited my attention to supplementary statements of informant which were given from time to time and the anomalies appearing therein. According to the learned counsel, there is no cogent and convincing evidence to show the participation of applicant in the alleged crime. The learned counsel also assailed the Test Identification Parade by terming it as suspicious and therefore much weight cannot be given to the same. Investigation is completed. Charge-sheet has been filed. In such circumstances, the applicant deserves to be released on bail.

4 Mr.A.A.Palkar, learned APP, on the other hand, opposed the submissions by contending that there are statements of witnesses. The applicant has been duly identified in the Test Identification Parade. Having regard to the nature of offence, the applicant may not be enlarged on bail.

5 Perused the investigation papers. While lodging the First Information Report (FIR) the informant specifically mentioned that there were five unknown persons in the age group of 25 to 30 with description given therein. This FIR was lodged on 1st April 2019. Again on the same day, his supplementary statement was recorded in which he added that cash amount of Rs.25,000/- was also taken by those unknown persons while committing dacoity. Again his supplementary statement was recorded on 6th April 2019 in which he told that there were eight persons named therein. Then again his supplementary statement was recorded on 13th April 2019 and he revealed that he came to know from his daughter-in-law, namely, Suvarna Prashant Yadav that on 30th March 2019 there was

hunters fair where all the accused including the applicant were present and they had decided to commit dacoity in the house of informant. Interestingly, this fact was told to said Suvarna Prashant Yadav by the villagers. However, the name of villager or villagers are nowhere disclosed. It appears that on the basis of this supplementary statement, the present applicant also came to be roped in.

6 Then there is Memorandum of Test Identification Parade wherein the applicant came to be identified by the wife of informant, namely, Ramal Bhaskar. It may be noted here that Test Identification Parade was carried out on 20th September 2019 whereas the incident had taken place on 1st April 2019 i.e. after more than five months. In view of supplementary statement of informant dated 13th April 2019 discussed hereinabove, the whole exercise of Test Identification Parade and identification thereof of the applicant appears to be doubtful.

7 There is also recovery of Rs.5,000/- at the instance of applicant under Section 27 of the Indian Evidence Act but that in itself will not be sufficient to prove the involvement of applicant in the offence.

8 Having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Dharmendra Sukana Kale shall be released on bail in Crime No.256 of 2019 registered with Police Station Islampur, Sangli, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.

- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)