

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2013 OF 2021

LAKHAN SUBHASH JADHAV

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Samyak Gimekar, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 17th 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.11 of 2021 registered with Police Station Chandan Nagar, for offences punishable under Section 399, 402 read with 34 of the Indian Penal Code (IPC), Section 37(1) and 135 of Maharashtra Police Act and Sections 4, 25 of Arms Act.

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2 The prosecution case in short is that on 10th February 2021, informant received an information from the informer that 4 to 5 persons armed with sickle, knife and other weapons have gathered near a shop by name Gurukrupa Cement Agency, Kharadi, Pune and are intending to commit dacoity. The informant along with staff members visited the said place and found five persons chitchatting near Gurukrupa Cement Agency shop in front of PMPL post office on Kharadi bypass road. Since their movement was suspicious, they raided the spot and were able to apprehend four persons. However, one of them was able to run away. On being enquired, those apprehended persons revealed their names as Lakhan Subhash Jadhav (applicant), Jayesh Parshuram Gaikwad, Karan Haridas Jadhav and Ajay Anil Jadhav. The name of the person who had run away was Sunny. On further enquiry, those persons revealed that they were intending to commit dacoity at Mini Lucky Country Bar and Beer Shoppe, Kharadi, Pune. FIR came to be lodged accordingly.

3 Mr.Samyak Gimekar, learned counsel for the applicant, submits that the necessary ingredients of Sections 399 and 402 are missing. There is no evidence to show that the applicant along with other accused had planned to commit dacoity. Investigation is over. Charge-sheet has been filed. In such circumstances, the applicant deserves to be enlarged on bail, argued learned counsel.

4 Mr.H.J.Dedhia, learned APP, on the other hand, submits that the applicant along with other accused was found in possession of deadly weapons like sickle, knife, chilli powder and thus had planned to commit dacoity. There are antecedents. Having regard to the nature of offence, the applicant does not deserve to be enlarged on bail.

5 Perused the investigation papers. From the FIR it appears that the applicant along with other accused was found in possession of weapons in contravention of the Prohibitory Order dated 26th December 2020 of Joint Commissioner, Pune City, and

also chilli powder. According to prosecution it were accused who themselves revealed that they were intending to commit dacoity in Mini Lucky Country Bar and Beer Shoppe. However, what is pertinent to note is that the informant had received a secret information about the intending act of dacoity at the hands of applicant and other accused. However, the statement of that informer is not forthcoming because it was he who was having the personal knowledge of the planned dacoity at the hands of applicant and other accused.

6 The mere fact that applicant along with other accused was found in possession of weapons does not make out a case either under Section 399 or 402 of the IPC in as much as there is nothing to show that applicant and others had assembled there for the purpose of committing dacoity.

7 There is one more reason. According to version of prosecution applicant and others had gathered in front of a shop by name Gurukrupa Cement Agency. It is not the case that they

were found in a secluded place concealing their presence or identity but they were found in a market place, that too in front of Gurukrupa Cement Agency. It is difficult to believe that the applicant and others would have assembled in front of said shop i.e. to say at such conspicuous place in market for committing dacoity by taking such a grave risk. The evidence must show that the association was for the purpose of committing dacoity which is prima facie lacking.

8 For the aforesaid reasons, even though there are antecedents, but the evidence qua the applicant is not overwhelming. Therefore, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Lakhan Subhash Jadhav shall be released on bail in Crime No.11 of 2021 registered with Police Station Chandan Nagar, 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 co-operate with the investigation.
- (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.)