

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2685 OF 2021**

1. Ganesh Babab Aadga	)	
	)	
2. Rajesh Madhukar Khache	)	
	)	
3. Gokul Devram Ghatal	) ..	Applicants
Versus		
The State of Maharashtra	) ..	Respondent

...

Mr.S.V.Marwadi with Mr.N.M.Nadar for the Applicants.

Ms. A.A.Takalkar, APP for the State.

Mr.M.S.Sharma, P.H. attached to Safale Police Station present.

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CORAM: BHARATI DANGRE, J.

DATED : 21st SEPTEMBER, 2021

P.C:-

1. The three Applicants, who have been arraigned as Accused Nos.1, 2 and 5 in C.R.No.I-58 of 2019 registered with Safale Pollice Station for the offences punishable under Sections 395, 397, 394, 342, 352,120-B, 323 and 34 of the Indian Penal Code (for short, "**the IPC**"), seek their release on bail. Applicant Nos.1 and 2 came to be arrested on 08/11/2019 whereas Applicant No.3 is arrested on 11/11/2019 and since then they remain incarcerated, awaiting the trial.

2. At the outset, learned counsel Mr.Marwadi, makes a statement that he do not want to press the application qua Applicant No.2-Rajesh Madhukar Khache (Accused No.2), in light of the material compiled against him in the charge-sheet.

3. The investigating machinery was set into motion on a report lodged by one Chandrakant Patil, alleging that on 24/10/2019 at 9.00 p.m., when he was present in the house alongwith his wife, whilst one of their servants was sleeping outside the house, four unknown persons gained entry in the house and robbed them of cash of Rs.4,500/-, a gold mangalsutra, gold ear rings (5 gm) and three mobile phones worth Rs.42,000/-, by brandishing knives. It was also narrated that one of the assailants injured the Informant on his left hand thumb while they tied him and his wife and escaped the house, after bolting the door from outside.

The FIR refer to the four unknown persons whose description has been given by the Informant with reference to their complexion, body structure, clothes and the approximate age group in which the person would be categorised.

4. On completion of investigation, when the charge-sheet is instituted, it is alleged that Accused Nos.5 and 3 alongwith other arrested Accused, in furtherance of the conspiracy,

committed robbery in the house of the Informant on 24/10/2019. The charge-sheet allege that on the said date, Accused No.1 accompanied by Accused Nos.2 and 3 reached the spot on his motorcycle whereas Accused No.9 proceeded on his Honda motorcycle accompanied by Accused Nos.4 and 8. They met Accused No.5 at Navghar. It is alleged that Accused No.6 presented hand-gloves whereas Accused No.1 handed over two knives to Accused Nos.2 and 3 whereas Accused No.5 is alleged to have shown the way to the house of the Informant. The charge-sheet accuse that Accused Nos.2, 3, 4 and 8 gained entry in the house for committing dacoity whereas Accused Nos.1 and 9 kept watch on the person sleeping outside the house and Accused Nos.5, 6 and 7 maintained surveillance on the house while the robbery was being committed. Accused No.2 is alleged to have caught hold of the wife of the Informant and threatened her by pointing a knife whereas Accused No.3 caught hold of the Informant, and at knife point injured him. Accused No.2 snatched the jewellery on the person of the wife of the Informant, and assaulted her by fist and kick blows. Collectively, Accused Nos.2, 3, 4 and 8 took away cash of Rs.4,500/- alongwith the mobile phones.

5. Mr.Marwadi, learned counsel appearing for the Applicants, submit that Applicants have not been put for test identification parade and this lacuna is fatal to the prosecution, since the FIR is lodged against the unknown persons and there are only four persons, who barged an entry, as per the Informant. Learned APP does not dispute that Applicant Nos.1 and 3 are not subjected to the test identification parade. She, however, rely upon the recovery of mobile phone of the Informant from Applicant No.1 and recovery of the amount of Rs.3,000/- from the house of Applicant No.3. When asked whether there is any material compiled in the charge-sheet to establish that the amount of Rs.3,000/-, recovered from Applicant No.3 is from the booty, in form of the cash which was stolen from the house of the Informant, learned APP states that there is no investigation carried to that effect to establish the same. As far as the role attributed to the Applicant No.3 in the charge-sheet is concerned, he caught hold of the Informant and caused him injury, but he has not been put to test identification parade. Therefore, the accusations do not stand fortified by an positive material contained in the charge-sheet.

As far as Accused No.1 is concerned, he is given a role of keeping watch on the person, sleeping outside the house meaning thereby that he did not participate in the actual act of robbery in the house and what is attributed to him in the charge-sheet is recovery of mobile phone of the Informant and two knives from him. Further, Hornet motorcycle is also recovered. The prosecution has alleged that Applicant No.1 was present outside the house and he has not participated in the actual act of robbery, but undisputedly, with the aid of Section 120-B, he can be held guilty of conspiracy, which shall be proved at the time of the trial. There is recovery of the golden ornaments from Applicant No.2 and the said ornaments have been identified by the Informant's wife. However, Mr.Marwadi has not pressed the application as against the said Applicant.

6. In the wake of the accusations contained in the charge-sheet and in view of the long incarceration of Applicant Nos.1 and 3 from November, 2019, the Applicants deserve their release on bail, subject to the conditions.

7. The application stands withdrawn as against Applicant No.2.

: **ORDER** :

- (a) The Application is partly allowed.
- (b) Applicant No.1-Ganesh Baban Aadga and Applicant No.3-Gokul Devram Ghatal shall be released on bail in C.R.No.I-58 of 2019 registered with Safale Police Station on furnishing P.R. bond to the extent of Rs.25,000/-each, with one or two sureties of the like amount.
- (c) The Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.
- (d) The Applicants shall make themselves available as and when required by the Investigating Officer.

(SMT. BHARATI DANGRE, J.)