

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1955 OF 2021

ATUL BABULAL GAJARMAL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

BAIL APPLICATION NO.2588 OF 2021

SAMIR LIYAKAT PATHAN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Patil i/b. Mr.Prashant Hagare, Advocate for the Applicant in B.A.No.1955 of 2021.

Mr.Vaibhav Gaikwad, Advocate for the Applicant in B.A.No.2588 of 2021.

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

CORAM : V. G. BISHT, J.

**RESERVED ON : 15th NOVEMBER 2021
PRONOUNCED ON : 22nd NOVEMBER 2021**

P.C. :

1 The present applications have been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No.867 of 2020 registered with Police Station Yavat, Daund, Pune, for offences punishable under Section 395, 341, 34 of the Indian Penal Code (IPC).

2 It is the case of the prosecution that the informant, who is a driver by profession, along with his companion, who is also a driver, was taking his tempo truck on 12th September 2020 bearing Registration No.MH-10-CR-4149 loaded with material of clothing fabric rolls and plastic rolls via Malegaon-Ahmednagar-Daund-Chowfula. The prosecution alleges that at about 1.25 a.m. all of a sudden a black coloured car came across the tempo truck from which three persons in the age group of 20 to 25 alighted. One of them entered the cabin of the truck, brandished a knife and pulled the complainant down from the driver's seat and occupied the driver's seat. They then robbed the informant

and informant's friend namely Anil of Rs.3,000/- and Rs.1,000/- respectively. They then took the truck towards Chowfula and from Pune-Solapur Highway brought it to Patas where they asked the informant and his friend to get down and drove the truck towards Supa. The informant, accordingly, lodged the report against unknown persons.

3 Mr.Kuldeep Patil and Mr.Vaibhav Gaikwad, learned counsel for the applicants submitted that some of the accused have already been released on bail by this Court (Coram : Revati Mohite Dere, J.) vide order dated 6th October 2021 and (Coram : Smt.Bharati Dangre, J.) vide order dated 29th July 2021, and therefore, the present applicants also claim parity. The learned counsel then assailed the Memorandum of Test Identification Parade by submitting that same dummies were used and the Test Identification Parade was carried out after a long time. In such circumstances, much significance cannot be attached to the Test Identification Parade. For all these reasons, the applications deserve to be allowed, argued learned counsel.

4 Mr.Dedhia, learned APP, invited my attention to the Affidavit of Investigating Officer and submitted that there is sufficient evidence on record to prove the complicity of applicants-accused in the offence. Moreover, both of them are having criminal antecedents, the details of which are given in the Affidavit and therefore, in such circumstances, the application need not be granted.

5 At the very outset, it may be noted from the record that the truck in question and as also the goods which were allegedly taken away by the applicants – accused have been seized during the course of investigation. This is one material aspect.

6 It is also seen from the record that two accused namely Laxman @ Pankaj Dhananjay Jadhav and Vinod Vitthal Admane have also been released on bail by this Court on 6th October 2021 and 29th July 2021 respectively. It may not be out of place to note from the charge-sheet that during the course of

investigation, it revealed that in all there were nine accused including the applicants who are before this Court and as also who have been released on bail. They were also having similar antecedents and since everything was recovered and the fact that charge-sheet is filed, this Court was pleased to release those accused on bail. Here the situation is almost identical.

7 Coming on the merits, although the Memorandum of Test Identification Parade is on record, but the same is not free from blame for two reasons – firstly, the Test Identification Parade was not undertaken immediately and it was conducted almost after a month of the incident, and, secondly, same dummies were used for identification of applicants. Thus, definitely, the whole exercise does not appear to be above board.

8 For all the aforesaid reasons, I am also inclined to allow the present application. Hence, the following order :

ORDER

- (i) Applicant – Atul Babulal Gajarmal (B.A.No.1955 of 2021) and Applicant – Samir Liyakat Pathan (B.A. No.2588 of 2021) shall be released on bail in Crime No.867 of 2020 registered with Police Station Yavat, Daund, Pune, on their executing P.R.Bond in the sum of Rs.20,000/- each, with one or two sureties in like amount by each of the applicant.
- (ii) The applicants shall attend the concerned police station on the first Sunday of every month between 10.00 a.m. to 11.00 a.m. till filing of charge-sheet.
- (iii) The applicants to co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.
- (iv) The applicants shall not tamper with evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) Bail before trial Court.

(vii) The applications are allowed in the aforesaid terms and stand disposed off accordingly.

9 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.

(V. G. BISHT, J.)

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