

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 265 OF 2021

1. Asif Ekbal Said Ahmed
2. Amir Shaha Arman Shah
3. Mohammad Mazammil Md. Murtuza
4. Bhagyesh Bhagwan Mahale Applicants

Versus

The State of Maharashtra Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 1353 OF 2020

Ubaid Samsuddin Ansari @ Badde Applicant

Versus

The State of Maharashtra Respondent

Mr. Mahendra N. Sandhyanshiv, for the applicants in BA No. 265/2021.

Mr. Jayendra D. Khairnar, the applicant in BA No. 1353 of 2020.

Smt. A.A. Takalkar, APP for the State/Respondent in BA No. 265/2021.

Ms. Pallavi N. Dabholkar, APP for the State/Respondent in BA No. 1353/2020.

CORAM :SARANG V. KOTWAL, J.
DATE :15th MARCH, 2021

PC. :

1. Both these applications are decided by this common order because they arise out of the same offence and the same investigation.

2. For the sake of convenience, the applicants are referred to by their names.

31. The applicants are seeking their release on bail in connection with C.R.No. 200 of 2019 registered at Malegaon Chhavni Police Station, Nashik on 19/10/2019, under sections 392, 395, 120-B, 411, 412 read with Section 34 of the Indian Penal Code. The applicant Asif was arrested on 14/11/2019. The applicants Amir and Mohammed Mazammil were arrested on 24/11/2019. The applicant Bhagyesh Mahale was arrested on 3/11/2019 and the applicant Ubaid was arrested on 12/11/2019. Since then they are in custody. The investigation is over and the

charge-sheet is filed.

2. Heard Mr. Mahendra N. Sandhyanshiv, Mr. Jayendra D. Khairnar, learned Counsel for the applicants and Smt. A.A. Takalkar and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The FIR is lodged by one Zumberlal Bagul. He was a jeweller and he has his jewellery shop at Chandanpuri Gate at Malegaon. On 18/10/2019, at about 9.30 p.m., while returning home, he was carrying some gold. It was kept in the dicky below the seat of his two wheeler. Some silver ornaments were kept in a cotton bag and it was kept on the handle of his two wheeler. He was going home. Near Vardhaman School, three unknown persons intercepted him. One unknown person came from behind. He threw chili powder in his eyes. One of the unknown persons, snatched his cotton bag containing silver ornaments. The informant tried to chase him. The unknown person met his other associates with this bag at some distance near a motor cycle. There were two more unknown persons on that motor cycle. He

alongwith them went away from the spot. In the meantime, cotton bag fell down from his hand. The informant took it in his custody. In the meantime, the other unknown persons took away gold which was kept in the dicky. Based on these allegations, he lodged FIR against four unknown persons. According to him property worth more than Rs. 10 lakhs was taken away. In his supplementary statement he has given details of stolen articles and in his supplementary statement dated 17/11/2019, he has stated that the articles worth more than Rs. 32 lakhs were stolen. He had also produced the receipts.

4. The investigation was carried out. The accused including the present applicants were arrested. It is prosecution case is that the applicant Bhagyesh gave tip about the informant's daily routine to other accused who kept watch and committed this offence. In all there are 14 accused. Some of the accused are receivers of stolen property.

5. Learned Counsel for the applicants submitted that co-

accused who are similarly placed are already granted bail by this Court and in particular, they relied on orders passed in cases of Mushir Ali Noorali Sayyed and Ganesh Rajendra Vadage and others passed in LD/VC/DIST/Bail Application No. 132 of 2020 and LD/VC/DIST/Bail Application No. 160 of 2020 passed on 4/12/2020. They submitted that on the ground of parity the present applicants also deserve to be released on bail. Though applicant Bhagyesh Mahale's case is different, learned Counsel for appearing for him submitted that considering that he was 19 years old and he has not taken part in the actual taking away of the articles, leniency should be shown to him. Learned Counsel submitted that the identification parade was held, but amongst all these applicants, only applicant Amir was identified, in the parade held on 21/1/2020. In the same parade, the informant had identified other co-accused namely Mushir Sayyed, Jisan Ahmed, Tahir Jamal . Co-accused Mushir is already granted bail vide the order mentioned hereinabove. It was submitted that all the five suspects were put in the same parade and there were 35 dummies. It was not held in parts and all the suspects were put in the same

parade which was in gross violation of the rules framed for conducting identification parade.

6. Learned APP relied on the charge-sheet and allegations in the charge-sheet to oppose this application. She also relied on identification parade in which applicant Amir was identified. She submitted that the applicant Bhagyesh had given tip and therefore this offence was committed.

7. I have considered these submissions. With the assistance of learned Counsel for the parties, I have perused the charge-sheet. Besides, the first informant there were two other eye witnesses who had witnessed the incident namely Sheelabail Pawar and Jyoti Mohite. However, they were not asked to identify the suspects in the parade. Therefore, their evidence does not help the prosecution case. The applicant Amir was identified in the parade but so was co-accused Mushir who was granted bail by this Court (Coram: C.V. Bhadang, J.) . Therefore on the grounds of parity, same consideration will have to be applied to the applicant

Amir's case. It is also required to mention that the identification parade was held in a very unsatisfactory manner in which all five suspects were put in the same parade with 35 dummies.

8. There is no recovery of cash or ornaments from any of the accused except Bhagyesh. From Bhagyesh there is recovery of Rs. 1 lakh when he was arrested on 3/11/2019. This is reflected in the statement of API Sunil Ahire. However the confession attributed to the Bhagyesh will not be admissible because it was made before police. However, recovery of Rs. 1 lakh in cash which is not explained is an incriminating circumstance against him. Admittedly he was not present at the spot and he has not actually participated in robbing the articles. Since the other accused who had actually committed robbery were granted bail. Considering his young age, some leniency can also be shown to him.

9. Against all other applicants, there is absolutely no incriminating material either in the nature of identification parade or recovery of any stolen articles. In this view of the matter, all the

applicants deserve to be released on bail. However, considering seriousness of the allegations, some conditions are imposed on them.

10. Hence the following order.

ORDER

- (i) In connection with C.R. No. 200 of 2019 registered with Malegaon Chhavni Police Station, Nashik, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The applicants shall attend concerned Police Station once in every fortnight till framing of the charges.
- (ii) Both the applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)