

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2804 OF 2021

SAMBHAJI SITARAM GORE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Vaibhav Ugle, Advocate for the Applicant.

Ms.Pallavi Dabholkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 8th DECEMBER 2021
PRONOUNCED ON : 22nd 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.216 of 2019 registered with Police Station Sinhagad Road, for offences punishable under Section 395, 506(2), 341, 201 of the Indian Penal Code (IPC). and Section 37(1) read with 135 of the Maharashtra Police Act.

AVK

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2 It is the case of prosecution that at about 1.30 a.m. of 12th March 2019, suddenly four unknown persons entered into house of informant. They tied hands and legs of the family members. Even the parents were assaulted by these unknown persons with wooden sticks. They forcefully took away cash and gold ornaments worth Rs.3,41,250/-. Besides that, mobile phones and one two wheeler was also taken away. The informant accordingly lodged the First Information Report (FIR).

3 Mr.Vaibhav Ugle, learned counsel for the applicant, submits that except recovery and due identification in the Test Identification Parade, there is nothing on record to connect the applicant with the alleged offence. Moreover, co-accused, namely, Somnath Vitthal Mane, has already been released on bail by this Court on 9th October 2019. Investigation is over and charge-sheet has been filed. There are no criminal antecedents. Hence, the applicant deserves to be enlarged on bail.

4 Ms.Pallavi Dabholkar, learned APP, on the other hand, opposed the submissions by contending that not only the applicant was identified in the Test Identification Parade but there was recovery at his instance. There is sufficient evidence on record to connect the applicant with the alleged offence. There being no merit in the application, the same is liable to be rejected.

5 Perused the investigation papers. The evidence in respect of applicant is two-fold. First, his discovery statement recorded under Section 27 of the Indian Evidence Act whereby the clothes which he was wearing at the time of the incident came to be seized. This circumstance, in my view, do not further the case of the prosecution.

6 Second piece of evidence is identification of the applicant in the Test Identification Parade at the hands of the informant. But there is neither recovery of cash or gold

ornaments nor any positive evidence is there to define the role of the applicant. Although the learned APP during the course of submissions argued that the applicant cannot claim parity qua co-accused Somnath Vitthal Mane, but it is not so in my opinion, for the reason that the said co-accused at the relevant time was not only known to informant but was waiting outside the house of the informant. Moreover, there was recovery of gold chain and ear rings at his instance and despite that, this Court (Coram : Sarang V. Kotwal, J.) for the reasons given in the order, was pleased to admit the co-accused on bail.

7 Having regard to the material on record and the fact that investigation is over and charge-sheet has been filed, no useful purpose would be served by keeping the applicant behind the bars. I am, therefore, inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Sambhaji Sitaram Gore shall be released on bail in Crime No.216 of 2019 registered with Police Station

Sinhagad Road, 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 concerned police station once in a month till conclusion of the trial.
- (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.)