

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Application (BA) No. 284 of 2021
Harsh s/o Vivek Wankhade Vs. State of Maharashtra through Police Station
Officer, Awadhootwadi, Yavatmal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Imran Deshmukh, Advocate for the applicant
Mr. A.M. Kadukar, APP for the respondent – State.

CORAM : MANISH PITALE, J.

DATED : JUNE 08, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant herein has approached this Court seeking bail in connection with offence registered against him under Section 392 R/w 34 of the Indian Penal Code, 1860. As per the report submitted by the informant, on 14/09/2020, two unknown persons had waylaid him and snatched a bag from him containing Rs.2,40,000/-. The informant stated that the two unknown persons had covered their faces with cloth and, therefore, he was unable to give a detailed description about them and yet he claimed that he would be able to identify them.

3. The incident occurred on 14/09/2020 and the first information report (FIR) stood registered on the same day

at Police Station Awadhootwadi, Yavatmal. The applicant was arrested on 13/11/2020.

4. The Sessions Court has rejected the bail application of the applicant primarily on the basis that the informant identified the applicant in an identification parade and further that an amount of Rs.46,400/- was recovered by the police from the applicant during the course of investigation.

5. Pursuant to notice issued by this Court, respondent – state filed its reply and opposed the prayer for grant of bail, *inter-alia* contending that the applicant was indeed identified by the informant and that cash was recovered from him during investigation. It was also pointed out that the applicant was a habitual offender, for the reason that another case for offence under Section 307 of the Indian Penal Code was registered against the applicant.

6. Mr. Deshmukh, learned counsel appearing for the applicant submitted that a perusal of the contents of the oral report, leading to registration of FIR would show that even as per the informant, the two unknown persons, who snatched his bag full of cash from him, had covered their faces and that, therefore, the applicant being identified by the informant appeared to be far-fetched. It was further submitted that merely because certain amount of cash was recovered from the applicant could not be a basis to connect the applicant with the alleged offence. It was further submitted that other co-accused persons have been released

on bail and that the applicant was ready to abide by the conditions that may be imposed by this Court for grant of bail.

7. On the other hand, Mr. A.M. Kadukar, learned A.P.P. opposed the prayer for grant of bail, emphasizing upon the fact that the applicant stood identified in the identification parade and that cash amount was recovered from him. It was also emphasized that the applicant had criminal antecedents and that, therefore, he did not deserve to be enlarged on bail.

8. Having heard the learned counsel for rival parties and upon perusal of material on record, it is clear from the contents of the oral report, leading to registration of the FIR, that even as per the informant he did not know the two accused persons, who had snatched the bag full of cash from him. The informant himself stated in the report that there were two unidentified persons responsible for the act. It was also clearly stated that at the time of the incident, the said two unidentified accused persons had covered their faces with cloth.

9. In the face of such a report, leading to registration of FIR, *prima facie* and at this stage, it appears that the informant having identified the applicant in an identification parade cannot be the sole basis for rejection of the prayer for grant of bail made on behalf of the applicant. If the informant himself stated in the report that the faces of

two unidentified accused persons were covered by clothes, it becomes a crucial factor in so far as the veracity of the identification of the applicant by the informant is concerned.

10. Apart from this, the Sessions Court has relied upon the recovery of certain amount of cash from the applicant as a ground for rejection of the prayer of bail. At present there is nothing on record to connect the said cash allegedly recovered from the applicant with the offence in question. It is also an admitted position that co-accused persons have been released on bail.

11. In this situation, only because the applicant also has another criminal case registered against him cannot be a reason for rejecting the prayer for grant of bail, when *prima facie* case is made out on his behalf in so far as the present case is concerned.

12. Considering the criminal antecedents of the applicant, appropriate conditions can be imposed on the applicant while allowing the present application.

13. In view of the above, the application is allowed in following terms :

(a) The applicant shall be released on bail in connection with FIR No.605/2020 dated 14/09/2020, registered at Police Station Awadhootwadi, Yavatmal for offence under

Section 392 r/w 34 of the Indian Penal Code on furnishing PR bond of Rs.50,000/- (Rs. Fifty Thousand) and surety in the like amount.

(b) The applicant shall report to Police Station Awadhootwadi, Yavatmal on every 2nd and 4th Monday of each month between 10:00 A.M. to 12:00 Noon, during the pendency of the trial.

(c) The applicant shall attend each and every date of the proceedings during the course of trial.

(d) The applicant shall not in any manner himself or through any person tamper with the evidence or influence the witnesses.

14. Needless to state, violation of any of the aforesaid conditions would make the applicant liable for cancellation of grant of bail.

15. It is also clarified that observations made in the present order are limited to the question of grant of bail to the applicant and that the proceedings in the trial shall not be influenced by this order in any manner.

16. The application stands allowed in above terms.

JUDGE