

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 751 OF 2021

Shaharukh Khan Subhan Khan

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Mangrulpir, Dist. Washim

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri Anil Mardikar, Senior Advocate a/b Shri Ved Deshpande, Advocate for
applicant.

Shri V.A. Thakare, APP for non-applicant.

CORAM : PUSHPA V. GANEDIWALA, J.

DATE : 22nd NOVEMBER, 2021.

Heard.

2. This is the second bail application filed by the applicant seeking his bail in Crime No.174 of 2019 registered with Police Station, Mangrulpir, District Washim for the offence punishable under Sections 120B, 342, 380, 395, 427, 506B read with Section 34 of the Indian Penal Code.

3. The earlier bail application bearing No.539 of 2020, came to be withdrawn since this Court, after hearing the parties for some time, expressed its view, not to pass any favorable order.

4. Thereafter, the change in circumstance, as has been pleaded on behalf of the applicant is that the applicant is behind bar since last more than two years and the chances of commencement of trial in time appear to be bleak.

5. During the pendency of this application, it is stated that the co-accused in this crime has been released on bail by the Co-ordinate Bench of this Court vide the order dated 20.10.2021 in Criminal Application (BA) No.1004 of 2021. Shri. Mardikar, learned Sr. counsel appearing for the applicant claimed parity for the release of the present applicant.

6. The allegations against the applicant are that the applicant along with co-accused committed dacoity by breaking open the ATM machine and cash amount of Rs.13,30,300/- was found missing from the said ATM machine.

7. The learned Additional Public Prosecutor Shri V.A. Thakare, appearing on behalf of the State strongly opposed the application and submitted that the ground of parity is not applicable to the applicant as one gas cylinder, gas cutter and cash of Rs.23,700/- came to recovered from the present applicant under Section 27 of the Indian Evidence Act and he has been identified by the eye witnesses.

8. It is stated that the applicant came to be arrested on the basis of tower location. He has stated names of the other 4 accused involved in this crime. They are already found to be in jail custody in other similar crime. All the accused are stated to be from the State of Haryana and they are habitual in committing such type of crime. It is stated that the remaining accused in this crime are still absconding. The chargesheet came to be filed against these accused by showing other accused as absconding.

9. I have considered the rival contentions and perused the record so also the Order of the Co-ordinate Bench of this Court releasing the co-accused. The co-accused came to be released having regard to the material against him and his two years custody in jail. I am satisfied that the ground of parity is not applicable to the present applicant. The present applicant appears to be the prime accused in the crime of breaking ATM machine. Weapons for breaking the ATM machine and some cash amount came to be recovered from this applicant. He has been identified by the eyewitness during the Test Identification parade. On the say of this applicant, the co-accused who is released on bail, came to be arraigned in this crime. Having regard to the role attributed to the present applicant so also the material collected during investigation against him, the applicant is not entitled to be released on bail on the ground of parity.

10. For the reasons aforesaid, I am not inclined to allow the application and the same stands rejected and disposed of.

JUDGE

Wagh