

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

929 BAIL APPLICATION NO.294 OF 2022

**KASAM DASTTAGIR SHAIKH @ SHAIKH KASAM SHAIKH
DASTTAGIR
VERSUS
THE STATE OF MAHARASHTRA**

Shri. D. M. Shinde, Advocate for the applicant
Shri. V. S. Badakh, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 10th March, 2022**

PER COURT :-

1. Heard.

2. Prosecution case is that accused Dnyaneshwar Narayan Jadhav is a friend of the informant. Accused Dnyaneshwar made representation to the informant that he knows a person who would double the amount. On 11th January, 2021 accused Dnyaneshwar called the informant at Zhamzham Dhaba on Chaundi to Aundha road. At that time, accused Dnyaneshwar made same representation, acting on which informant paid the said Dnyaneshwar Rs. 2 lakhs and it was agreed that remaining Rs.3 lakhs should be paid at Aurangabad. On 29th January, 2021 applicant called up accused Dnyaneshwar.

At the instance of accused Dnyaneshwar applicant along with his friend Sopan Dattarao Jadhav went to hotel Lokseva at CIDCO. Applicant was accompanied by three unknown persons. Accused Dnyaneshwar made them sit in his Bolero car No. MH-20-4748 and showed him a corrugated box which contained notes in the denomination of currency notes of Rs.100/-. Accused Dnyaneshwar and those three persons assaulted the informant and his friend Sopan Dattarao Jadhav and snatched from them the bag containing Rs.3 lakhs. They beat the informant and Sopan Dattarao Jadhav. Accordingly, on 1st February, 2021 FIR came to be lodged.

3. Learned counsel Shri. Shinde for the applicant submits that name of the applicant is not there in the FIR. Applicant was not the person present with accused Dnyaneshwar. No recovery is effected against the applicant. No identification parade is held, therefore, applicant be released on bail.

4. Learned APP Shri. Badakh for the respondent/State submits that there is statement of witness Sanjay Balaji Jadhav

to the effect that applicant had accompanied accused Dnyaneshwar and had collected Rs.3 lakhs from him on the representation that the amount will be doubled. He submits that statement of witness Vilas Deokar also shows that applicant and informant had tried to cheat Vilas Deokar by misrepresentating that amount will be doubled. He, therefore, seeks rejection of the application.

5. Charge-sheet is filed. Supplementary charge-sheet against the applicant is also filed.

6. Admittedly name of the applicant does not figure in the FIR. Statement of witness Goverdhan Bhoyar shows that applicant and accused Dnyaneshwar had been to him and applicant gave him a bag saying that it contained Rs.2 lakhs. After reaching home he checked the currency notes and found that in each bundle of currency notes first note was a genuine one and the other notes were fake. Therefore, the said Goverdhan Bhoyar called up accused Dnyaneshwar and accused Dnyaneshwar said that he would give another currency notes and by mistake these notes were given to him. Accused

Dnyaneshwar came and collected the amount and went away. This shows that the entire amount was collected by accused Dnyaneshwar. Statement of witness Vilas Deokar shows that attempt was made by applicant and accused Dnyaneshwar upon him for cheating by misrepresenting that amount will be doubled. However, Vilas Deokar did not pay him a single farthing. From this evidence it appears that accused Dnyaneshwar is the master mind. Identification parade is not held. Therefore, there is no cogent evidence to show even at this *prima facie* stage that applicant was one of those who had accompanied Dnyaneshwar. FIR shows that in the beginning only accused Dnyaneshwar had approached the informant and amount of Rs.1 lakhs was paid by the informant to accused Dnyaneshwar only. Subsequent development shows that there was no misrepresentation but amount was stolen. Therefore, at this stage there appears no *prima facie* case against the applicant. Hence, I am inclined to release the applicant on bail. He has no criminal antecedents. There is no possibility of applicant fleeing from justice. In this view of the matter, following order is passed.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with CR No. 0030 of 2021 under Sections 417, 420, 327, 394, 489-A, 489-B, 489-C, 120-B, 170, 323, 506 read with Section 34 of the Indian Penal Code registered with Kurunda Police Station, District Hingoli, on condition that he shall not tamper the prosecution evidence and shall attend all the dates fixed during trial.
3. Application is disposed of.
4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp