

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.989 OF 2021

SIDDHARTH S/O MACHINDRA SONAVANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicants : Mr. A. S. Shejwal
APP for Respondent-State : Mr. A. M. Phule

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**WITH
BAIL APPLICATION NO.1087 OF 2021**

AMOL DNYANESHWAR JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. A. C. Deshpande
APP for Respondent-State : Mr. A. M. Phule

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**WITH
BAIL APPLICATION NO.1299 OF 2021**

PRAVIN @ BALU S/O VISHWANATH PANDIT
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. R. V. Gore
APP for Respondent-State : Mr. A. M. Phule

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
20-12-2021.**

**Date of Pronouncing the Order :
04-01-2022.**

ORDER :

1. All the applications are arising out of Crime No.66 of 2021, registered with Kannad Rural Police Station, District Aurangabad, for the offences punishable under Section 395, 341, 352 of Indian Penal Code and Section 50 of the Motor Vehicles Act.
2. All the applicants have been arrested during the course of the investigation and, therefore, they have filed these applications for bail under Section 439 of the Code of Criminal Procedure.
3. Heard learned Advocate Mr. A. S. Shejwal for applicants in BA No.989 of 2021, learned Advocate Mr. A. C. Deshpande for applicant in BA No.1087 of 2021 and learned Advocate Mr. R. V. Gore for applicant in BA No.1299 of 2021, and also heard learned APP Mr. A. M. Phule for respondent-State.
4. It has been vehemently submitted on behalf of the applicants that the applicants are in jail for considerable time and the investigation is over. Charge-sheet is filed and, therefore, their further custody for the purpose of investigation is not required. The prosecution has contended that the informant who is serving as

peon in Aurangabad District Central Co-operative Bank, Wadner Branch, Taluka Kannad District Aurangabad, was assigned with the work of bringing cash from another branch. Then he says that in all three persons extorted amount of Rs.10,00,000/- by sprinkling chilly powder on his face and threatening him to assault with stone. In fact, the story itself is unbelievable because a peon cannot be assigned with a job of bringing so much of cash. Further, if we consider the documents issued later on by the concerned branch who had allegedly given the amount in the hands of the informant, would show that it was in the name of two persons i.e. the branch manager and the peon informant. But the branch manager states that he had assigned the said job to the peon. The only evidence that has been collected by the investigating officer is the recovery of amount from the respective applicants and their identification made by the informant when identification parade was conducted. Under such circumstances, when it will take very long time to decide the case, the applicants deserve to be released on bail. They are ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly opposed the applications and submitted that whatever evidence has been collected against

the applicants is sufficient to prove their guilt beyond reasonable doubt and, therefore, no sympathy deserves to be shown to the applicants when substantial amount has been recovered from them.

6. At the outset, when the charge-sheet is filed it is obvious that a presumption can be raised that the physical custody of the applicants is not required for the purpose of investigation. Now it is required to be seen as to what evidence has been collected against the present applicants. Perusal of the FIR would show that the informant who is serving as a peon was assigned with the job by the manager that he should bring cash of Rs.10,00,000/-. There was no security guard given along with the informant. He went on his two wheeler, took the cash and was returning to his branch. He was stopped near a stream on the road by three persons who had come on motorcycle on which letters were written as "आईसाहेब" (*Aaisaheb*). Those persons had kicked the running motorcycle of the informant. As a result of which he fell down and sustained injury to his head. The person wearing white shirt had thrown chilly powder on the face of the informant and another person wearing red colour shirt rushed towards the informant by holding stone. Thereafter, they took out the bag of the cash kept on the motorcycle and fled away from that

spot on their motorcycle. Informant was not knowing those persons and, therefore, the FIR came to be lodged against unknown persons. Thereafter it appears that the prosecution story is that a secret information was received by the police stating that accused No.1 is the person behind the robbery and, therefore, he was taken in custody and, thereafter, the role of the other accused persons were revealed. Three persons were shown to the informant in identification parade held on 12-05-2021 and he has identified accused Vinod Machindra Sonavane, Anil Raju Narwade, Shaharuk Murad Shah. It is the further prosecution story that in all six persons were involved and only these three persons had actually done the act but the other three persons had received the amount which was looted. From accused Vinod @ Vinu Sonavane amount of Rs.4,00,000/-, from accused Anil Raju Narwade amount of Rs.2,00,000/-, from accused Shaharuk Murad Shah amount of Rs.2,48,000/-, from accused Siddharth @ Pintu Machindra sonavane amount of Rs.2,00,000/-, from accused Pravin @ Balu Vishwanth Pandit amount of Rs.57,000/-, and from accused Amol Dnyaneshwar Jadhav amount of Rs.14,500/- have been seized under recovery panchanama under Section 27 of the Indian Evidence Act. It is also to be noted that CCTV footage from the CCTV which was installed at

one shop namely "Sameer Pan Center" has also been recovered.

7. At this stage with this evidence the prosecution states that the offence has been committed by the six accused persons. It will not be out of place to mention here that by order dated 09-12-2021 information was called in respect of procedure as regards demand and handing over of cash from one branch to another branch which was not given in detail in the statements under Section 161 of the Code of Criminal Procedure. The Investigating Officer was present before the Court on 20-12-2021 and submitted that it appears that the said procedure has not been followed in the present case. There is also no such procedure to note down the currency note numbers when the bank is handing over cash to another branch. Therefore, with this it can be said that though there appears to be the recovery whether the amount is from the same incident, will have to be proved by the prosecution at the time of trial. For that purpose the recovery panchanama under Section 27 of the Indian Evidence Act will have to be proved. There is evidence in the form of identification parade and the CCTV footage. Therefore, with this evidence when trial is definitely going to take longtime, the applicants deserve to be released on bail, however, on stringent conditions. Hence, following

order.

ORDER

- 1) All the applications are hereby allowed.
- 2) Applicants i.e. accused No.1 Siddharth s/o Machindra Sonavane, accused No.2 Vinod s/o Machindra Sonavane, accused No.5 Anil Raju Narwade, accused No.6 Shaharuk s/o Murad Shaha, accused No.4 Amol Dnyaneshwar Jadhav, and accused No.3 Pravin @ Balu Vishwanath Pandit, in Sessions Case No.182 of 2021, pending before learned Additional Sessions Judge, Aurangabad, be released on P.R. of Rs.50,000/- each (fifty thousand) with one or two solvent sureties of like amount.
- 3) The applicants shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not indulge in any criminal activity.
- 5) Before submission of bail papers, the applicants should give complete address of their residence with their mobile numbers. So also they should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-