

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1404 OF 2021
WITH BA/1405/2021

DEVENDRA @ DADARAO VITTHALRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S. S. Thombre, Advocate for the applicant in both cases.
Mrs. Vaishali Patil Jadhav, APP for the respondent – State in both cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 22.12.2021

Pronounced on : 12.01.2022

ORDER :-

1. Both the applications have been filed by the same applicant, who is involved in Crime No.267 of 2021 and 268 of 2021 registered with Shillegaon Police Station, Dist. Aurangabad for the offences punishable under Sections 394, 341, 34 of Indian Penal Code and Sections 394, 397, 34 of Indian Penal Code respectively. The applicant came to be arrested on 18.09.2021 and 22.09.2021 respectively. Hence, he prays for bail under Section 439 of the Code of Criminal Procedure in connection with both the cases.

2. Heard learned Advocate Mr. S. S. Thombre for the applicant in both the cases and learned APP Mrs. Vaishali Patil Jadhav for the

respondent – State in both the cases.

3. It has been vehemently submitted on behalf of the applicant that the informants in both the cases were not knowing the present applicant, however, it is the prosecution story that both the incidents in the FIR's have taken place one after another. In Crime No.267 of 2021, it is stated that vehicle worth Rs.3,00,000/-, mobile phone worth Rs.10,000/- and cash of Rs.8,000/- was extorted by in all three persons. It is stated that they had come on a motorcycle. In Crime No.268 of 2021, it is stated that those persons, who had come in four-wheeler of which the number has been given, which matches with the car number in the earlier FIR, had intercepted the Innova car in which the informant was proceeding and, thereafter, after assaulting the informant and the driver, the Innova car, 1 pistol, 3 mobile phones and cash of Rs.90,000/- was snatched. It is then stated that while going away in the said Innova car, there was accident to the said Innova car and the police had intercepted those three persons. Their Aadhar cards were found in the car itself. Because of that, those persons have been identified and the present applicant has been stated to be the accused No.3. Now, the investigation is almost over and the charge-sheet is only remained to be submitted. Further physical custody of the applicant is not required. He deserves to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the applicant is involved in both the cases which have been committed on the same day almost in continuation and in the accident that had taken place, co-accused Yogesh Karbhari Rajdev expired and, therefore, another offence under Sections 279, 304-A of Indian Penal Code has been lodged. After the offence under Crime No.267 of 2021 was committed, the applicant and co-accused had taken Kwid car belonging to the informant and after intercepting that car to the Innova car, they snatched the Innova car and the other articles and the said car met with accident. It was noticed by the police patrolling party, who had then taken the injured persons to the hospital. The present applicant had also received injuries in the accident. Charge-sheet in respect of Crime No.267 of 2021 has been filed on 16.11.2021 before the concerned Court and the investigation in Crime No.268 of 2021 is almost over. The evidence collected in the matter clearly shows the active involvement of the applicant. Possibility of similar offence after the release cannot be ruled out.

5. Though the applications are in respect of different offences, yet it is to be noted that they have connected in a sense that from one offence the another offence is transpiring. If we consider the FIR in both the cases, the FIR i.e. Crime No.267 of 2021 has been lodged by one

Kevalsing Dharamsing Sulane, who was proceeding from Aurangabad to Solapur in Renault Kwid bearing MH-20-DV-4245. Around 10.30 p.m., he was near Pimpalgaon phata on Devgaon road. He was intercepted by one motorcycle on which there were three persons. He was asked to get down from the car and was pushed. Two persons sat in the car and the car was taken towards Devgaon. The another person went behind the car on motorcycle on which they had come. At that time, they had taken the mobile as well as cash of Rs.8,000/- belonging to the informant. He has given the description of those persons. The copy of the charge-sheet has been made available, which shows that the test identification parade was conducted and the informant had identified the applicant. Injury certificate of the informant also shows that he had received injuries.

6. The FIR i.e. Crime No. 268 of 2021 is lodged by one Satish Bhagwandas Gupta, who was the President of Chikhli Urban Cooperative Bank. He has given the FIR from ICU of Orion City Care Hospital. He states that he along with his driver were proceeding in Innova Car No.MH-28-BM-1857. They were coming to Aurangabad from Nandgaon and reached Kasabkheda phata bridge around 12.15 a.m. on 18.09.2021. They found that there is one big container obstructing their way and, therefore, their vehicle was slowed down. Kwid vehicle bearing No.MH-20-DV-4245 came from behind from which three persons

got down. The informant and his driver were forcibly got out of the car and they were assaulted by wooden stick on their head and other parts of the body. The driver of the informant became unconscious due to the assault. The vice president Purushottam Divte was also in the said car, who had also received the injuries. It is then stated in the FIR that after they were admitted to hospital, the bank manager told the informant about the name of the three persons, out of which the applicant was one of them. Offence under Section 397 of Indian Penal Code has been registered. Recently, the Hon'ble Supreme Court (Three Judge Bench) in ***Ram Ratan Vs. State of Madhya Pradesh, [2022 Live Law (SC) 14]*** held that use of the weapon does not require that the offender should actually fire or stab in order to constitute offence under Section 397 of Indian Penal Code, but mere exhibition or brandishing of the same is sufficient. In other words, it is stated that in order to meet the ingredients of Section 397 of Indian Penal Code, it is not necessary for the offender to have liberally use the weapon for the purpose it serves. Even show causing the same to create fear in the mind of the victim would be sufficient. Here, what has been stated to be used is wooden log. It had caused injuries to informant, Purushottam Divte and the driver of the informant. In fact, driver of the informant had become unconscious on the spot. Therefore, *prima facie* it can be said that the

ingredients of offence under Section 397 of Indian Penal Code have been made out.

7. We cannot forget the evidence that has been collected on record that test identification parade has been held in respect of this offence also. The applicant has been identified. Statements of the informant, vice president Purushottam Divte taken under Section 164 of the Code of Criminal Procedure would also give the entire description as to how they were assaulted.

8. Unfortunately, it appears that the Innova car, which was taken away by the applicant and co-accused met with accident and in that accident, co-accused Yogesh Karbhari Rajdev expired. Therefore, when there is *prima facie* evidence against the present applicant in both the cases, it would not be the fit case to release him on bail. Applications, therefore, deserve to be rejected. Accordingly, they are rejected.

[SMT. VIBHA KANKANWADI, J.]

scm

Later on :-

. After rejection of applications, learned Advocate for the applicants submits that he may be given liberty to apply for bail before the competent Court after filing of charge-sheet, as the applications which have been rejected today by this Court are before filing of charge-sheet.

2. If the right exist, the applicants may exercise it.

[SMT. VIBHA KANKANWADI, J.]

scm