

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

923 BAIL APPLICATION NO.1702 OF 2021

RUPSING CHATURSING TAK
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rathi Swapnil S.
APP for Respondents/State : Mr. S.B. Narwade

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CORAM : M.G. SEWLIKAR, J.
DATE : 10th February, 2022

PC.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail in connection with Crime No.42/2019 under Section 394, 75 read with Section 34 of the I.P.C. and under Section 3 (1) (ii), 3 (2) (4) of the Maharashtra Control of Organized Crime Act registered with Pathri Police Station, District Parbhani.

2. Facts in brief are that informant Shaikh Saurabh Shaikh Amjad has business of jewelry at Parbhani. On 14th February, 2019 the informant along with one Shrikant Dahale closed their shop and were returning on motorcycle with cash of Rs.90,000/- and silver and gold ornaments. When they were traveling, Shrikant Dahale received a call. At that very moment the motorcycle was hit by a white colour car from behind owing to which

informant Shaikh Saurabh fell down. Informant noticed that one person got down from the car. His age was 29 years and he was wearing white clothes. He picked up the bag. There were 2 - 3 occupants in the car. Thereafter, all those persons fled from the spot. Because of the dash informant and Shrikant Dahale sustained injuries. Shrikant Dahale fell unconscious at the spot. Informant tried to see the number of the car but it was without number. Thereafter, he lodged the FIR stating therein that cash of Rs.90,000/-, gold jewelry weighing 325 grams worth Rs.8,71,000/-, silver ornaments worth Rs.2,55,000/- were stolen. On these allegations FIR came to be lodged against the applicant and other accused on the basis of which crime as aforesaid came to be registered.

3. Heard Shri Rathi learned counsel for the applicant and Shri Narwade learned APP for the State.

4. Learned counsel Shri Rathi submits that there is no evidence against the applicant to indicate that he is a member of the gang. There is no evidence either to show that there was a gang of which he is a member. He further submits that evidence in this crime is too scanty to show complicity of the applicant in the offence. He submits that memorandum statement of the applicant shows that he had given ornaments to his maternal uncle and maternal uncle sold the ornaments to the jeweler and the ornaments were

recovered in melted form. He submits that there is no recovery at all. Since there is no evidence available applicant be released on bail.

5. Learned APP Shri Narwade submits that applicant has given confessional statement under Section 18 of the MCOC Act. He further submits that in the confessional statement he admits that he is the member of the gang of which one Kirpan Singh is the gang leader. He further submits that there are many cases pending against the applicant and in one of the cases the applicant has been convicted.

6. I have given thoughtful consideration to the submissions of both the learned counsels.

7. The evidence against the applicant is that at the instance of maternal uncle of the applicant gold was recovered in melted form. Statement of maternal uncle also shows that applicant had given him ornaments and he had given those ornaments to the jeweler. This shows that there is evidence against the applicant. Moreover, the record shows that applicant has several cases registered against him. Some of them are under Section 379, 380. It is not in dispute that in one of the crime applicant has been convicted. Learned counsel Shri Rathi submits that applicant has preferred appeal against conviction and he has been released on bail.

However, conviction has not been set aside. In addition to this, applicant has committed this offence while on bail in connection with the offence in which he has been convicted. In this view of the matter, this is not the case in which this Court can exercise discretion in favour of the applicant. Hence the order:

ORDER

- I) Application is dismissed.
- II) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]