

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

907 BAIL APPLICATION NO.1706 OF 2021

**ASHOK TUKARAM SHINDE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. H. I. Pathan, Advocate for the applicant
Shri. G. O. Wattamwar, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th February, 2022**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0073 of 2021 under Section 395 read with Section 34 of the Indian Penal Code registered with Shiruranantpal Police Station, Latur, Dist. Latur.

2. Prosecution case in brief is that the informant is working as salesman in Krushna Men's wear belonging to one Ankush Waryani. On 30th March, 2021, the informant closed the shop at 8.00 p.m. and left for home on his motorcycle. At 9.00 p.m. near Hanmantwadi, a motorcycle

and scooty on which 6 people were riding intercepted his motorcycle. They stole amount of Rs.1,500/- and mobile of Vivo company of Rs.14,000/- from the informant. Later on he came to know that one of those persons was apprehended by the villagers. The name of that person was Rushikesh Bapu Shewale. During interrogation of Rushikesh Bapu Shewale, names the applicant and other accused came to be disclosed. On these allegations FIR came to be lodged under aforesaid sections.

3. Heard Shri. Pathan, learned counsel for the applicant and Shri. Wattamwar, learned APP for the respondent/State.

4. Learned counsel Shri. Pathan submits that the identification parade has been held and the applicant has been identified by the informant. He further submits that for holding identification parade, same dummy candidates were used for identifying all the accused. The accused are in five in numbers. For all these five accused, the same dummy

candidates were used by the Tahasildar for holding identification parade. He therefore, submits that the identification parade gets vitiated.

5. Learned APP Shri. Wattamwar submits that the Tahasildar had to adopt this practice because of the on going pandemic and because of the restrictions imposed by the Government. He submits that on this count alone, identification parade will not get vitiated.

6. From the letter of the Tahasildar it is seen that as per the rules five dummy candidates are required to be used for holding identification parade. However, in this particular case, same 5 dummy candidates were used for holding identification parade. The reason given is of on going pandemic.

7. Except holding of identification parade, there is no evidence on record to show complicity of the applicant in the alleged offence. The identification parade has not been held

in accordance with the rules. Therefore, applicant is entitled to be released on bail. Learned APP submits that the applicant has criminal antecedents. One criminal case is pending against him under Section 397 of the Indian Penal Code. The relevance of antecedents will arise only when *prima facie* case is made out in the crime in which the applicant is seeking bail. In the case at hand, as indicated earlier the identification parade has not been conducted in accordance with the rules. Hence, applicant is entitled to be released on bail. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount in connection with CR No. 0073 of 2021 under Section 395 read with Section 34 of the Indian Penal Code registered with Shiruranantpal Police Station, Latur, Dist. Latur, on condition that he shall not tamper the prosecution evidence and shall attend the Court on 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