

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 367 OF 2021

Akshay Popat Dhas

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr.Aniket Nikam a/w. Mr.Piyush Toshnival, Mr.Ashish Satpute,
Mr. Amit Icham i/b. Mr. Vivek N. Arote for the Applicant.
Ms.Pallavi N. Dabholkar, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 15TH DECEMBER, 2021

PRONOUNCED ON : 20TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 18 of 2016 registered with Vaduj Police Station, Satara for the offence punishable under Sections 394, 397, 201 read with 34 of the Indian Penal Code (the IPC) and Sections 3 (1) (2), 3 (2), 3 (4) of the Maharashtra Control of Organized Crime Act, 1999.

2. On 22nd January, 2016 at about 7.30 pm, the informant along with his wife was proceeding towards Vaduj on his motorcycle. All of a sudden, a motorcycle having triple seats dashed his motorcycle from behind. As a result of which, both of them fell down. Out of those three unknown persons, a person wearing black clothes came armed with a sickle and gave blows on hands, neck and forehead of informant. He also gave a blow to informant's wife. Prosecution alleges that the said person then removed a gold chain from informant's neck and also gold pendant from the neck of informant's wife. Informant accordingly lodged the First Information Report (FIR).

3. Mr. Nikam, learned Counsel for the applicant, submits that necessary descriptions along with the features of those unknown persons were never given in the FIR dated 22nd January, 2016. It is only after three days i.e. on 25th January, 2016, when the statement of informant came to be recorded, he for the first time gave descriptions of those unknown persons. Although, informant and his wife identified

applicant in test identification parade but the said test identification parade is also not free from blame. According to learned Counsel, pendant has already been recovered at the instance of applicant. Moreover, co-accused, namely, Netaji Subhash Dhundare is released on bail by this Court (**Coram : Smt.Sadhana S. Jadhav, J.**) on 3rd July, 2018. Investigation is completed. Charge-sheet has been filed.

4. Ms. Dabholkar, learned APP, on the other hand, opposes the submissions by contending that the applicant is duly identified by informant and his wife in test identification parade. Applicant is a gang leader. There are criminal antecedents. In such circumstances, there being no merit in the application and the same is liable to be rejected.

5. Perused investigation papers.

6. FIR clearly shows that the incident had taken place at about 7.30 p.m. There were three unknown persons. Pertinently enough, their descriptions like their height, colour and features are nowhere given at the time of lodging of

report. However, after three days of the incident, informant gave a statement and for the first time stated therein that because of moonlight, he had seen those unknown persons and thereafter gave features of those unknown persons. Why at the time of report these material facts were suppressed by informant is nowhere explained.

7. This being so, the so called test identification parade *prima facie* loses its significance. Even otherwise, the finding of test identification parade is a corroborative piece of evidence and is required to be read in conjunction with other evidence, which certainly can be looked at the time of trial.

8. It is equally pertinent to note that the wife of informant, namely, Vidya also took part in the test identification parade and identified applicant. Her statement, during the course of investigation, was recorded on 23rd January, 2016 i.e. the next day of incident. She also stated in her statement that she and her husband had seen those unknown persons in moonlight. This material fact is nowhere disclosed by informant while

lodging the report. Therefore, there appears to be reasonable doubt about her having seen the features of applicant and others on the day of incident.

9. As far as the criminal antecedents of applicant are concerned, that has to be appreciated qua the material on record in respect of the offence in question. I have already pointed out the nature of evidence appearing on record against the applicant. In my view, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Akshay Popat Dhas shall be released on bail in C.R. No. 18 of 2016 registered with Vaduj Police Station, Satara on his executing P.R. Bond in the sum of Rs. 50,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall not reside in Taluka Karad and Taluka Khatau till conclusion of the trial.

(iv) The applicant shall inform his latest place of residence and contact number immediately after being released and/ or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned police station.

(v) Bail before the trial Court.

(vi) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)