

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

BAIL APPLICATION NO. 1633 OF 2021

Baban Chaitram Mahanor ...Applicant

Versus

The State of Maharashtra ...Respondent

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Ms.Avanti Inamdar i/b. Mr. Rameshwar Gite for the Applicant.
Mr. H.J.Dedhia, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.
RESERVED ON : 20TH DECEMBER, 2021
PRONOUNCED ON : 28TH 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. 100 of 2018 registered with Malegaon Taluka Police Station, District- Nashik for the offence punishable under Sections 394, 397, 341 read with 34 of the Indian Penal Code (the IPC).

2. It is the case of prosecution that on 18th April, 2018 at about 10.00 p.m., while informant along with his wife and

son was returning from dispensary, two unknown persons came on a motorcycle and started inquiring about the way to village Biroba Sakuri.

3. Prosecution alleges that as the informant slowed down his motorcycle, one of them gave a blow of an iron tommy on the head of informant. As a result of which, informant lost control of his motorcycle and fell in a pit. When informant got up, he was again assaulted by the said persons and that persons forcibly removed cash amount of Rs. 3,000/- from informant's pocket, a mobile phone worth Rs. 3,000/- and also gold ornaments from the person of informant's wife and cash amount of Rs. 1,500/- from the purse. In all, those unknown persons took cash amount of Rs. 4,500/- and the gold ornaments worth Rs. 42,000/-. Informant accordingly lodged the First Information Report (FIR).

4. Ms. Inamdar, learned Counsel for the applicant, submits that other co-accused including main accused has been

released on bail. There is no recovery from the applicant. The only evidence against the applicant is that he was identified in test identification parade by informant and his wife. Investigation is over. Charge-sheet has been filed. In such circumstances, the applicant deserves to be enlarged on bail.

5. Mr. Dedhia, learned APP, on the other hand, does not dispute that except the evidence of test identification parade, there is nothing against applicant. However, having regard to the nature of offence, the applicant does not deserve to be enlarged on bail, submitted learned APP.

6. Perused investigation papers.

7. From the investigation papers, it reveals that the recovery of gold ornaments and cash amount have been duly effected from co-accused Bhagwan Sitaram Kargal and Kalu Tukaram Shinde under Section 27 of the Evidence Act.

8. As far as the present applicant is concerned, admittedly, nothing has been recovered at his instance. The only evidence is in the form of test identification parade in which the applicant was duly identified by informant and his wife.

9. It may not be out of place to mention here that the evidence of test identification parade is not a substantive evidence and rather is corroborative in nature, which will have to be read along with other positive evidence at the time of trial. No criminal antecedents are brought on record against applicant. Therefore, applicant's custody is unwarranted.

10. In view of above, I am inclined to allow the application. Hence, the following order :

ORDER

(i) Applicant- Baban Chaitram Mahanor shall be released on bail in C.R. No. 100 of 2018 registered

with Malegaon Taluka Police Station, District Nashik on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

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

(iii) The applicant shall attend the trial Court proceedings regularly.

(iv) Bail before the trial Court.

(v) 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.

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

(V.G.BISHT, J.)