

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

BAIL APPLICATION NO. 1594 OF 2022

1) Arbaj Nawab Shaikh
2) Prakash Vijay Waghmare Applicants
v/s.
The State of Maharashtra Respondent

Mr. Vikrant V. Phatate for the Applicant.
Ms. Veera Shinde, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th NOVEMBER, 2022.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicants who are arrested in C.R.No.394/2021 registered with Alephata Police Station, Dist. Pune Rural for offence punishable under section 394 of the Indian Penal Code.

2. Heard Mr. Phatate, learned counsel for the Applicants and Ms. Shinde, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by

Avinash Patade. A perusal of the FIR reveals that on 06/12/2021, at about 10:00 p.m., five unknown persons who had covered their faces with kercheif and mask, entered his shop while one person waited outside the shop. He has stated that the person who was waiting outside the shop had pulled down the shutter while five persons who had entered the shop committed theft of cash of Rs.16,000/- at given point. It is alleged that the said persons also took away a mobile phone of OPPO company worth Rs.5,000/- and the keys of maruti suzuki car.

4. The records prima facie indicate that apart from cash of Rs.10,100/-, there was recovery of a mobile phone of the Complainant from accused no.1/Applicant No.1 immediately after the incident which prima facie proves involvement of the Applicant No.1 in commission of the said crime. Hence, I am not inclined to grant bail to the Applicant No.1.

5. As regards Applicant No.2, apart from his identification in Test Identification Parade held on 03/01/2022, there is no other material to show his involvement in the said crime. The Complainant has stated that the said unknown persons had entered his shop with faces covered with kerchief and mask. This fact would prima facie indicate that the

Complainant was unable to see the faces of the persons who had entered his shop and this prima facie renders Test Identification doubtful.

6. Considering the above facts and circumstances, the following order is passed :-

- (i) The Application is dismissed as against Applicant No.1 – Arbaj Nawab Shaikh ;
- (ii) The Application is allowed as against Applicant No.2 – Prakash Vijay Waghmare ;
- (iii) The Applicant No.2 – Prakash Vijay Waghmare who is arrested in C.R.No.394/2021 registered with Alephata Police Station, Pune Rural is ordered to be released on bail on furnishing P.R. bonds in the sum of Rs.30,000/- with one or two solvent sureties in the like amount ;
- (iv) The Applicant No.2 shall report to Alephata Police Station, Dist. Pune Rural on every 1st Monday of the month between 11.00 a.m. to 02.00 p.m. till framing of the charge ;

- (v) The Applicant No.2 shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (vi) The Applicant No.2 shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (vii) The Applicant No.2 shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

7. Bail Application stands disposed of in above terms.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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