

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3964 OF 2021

Mahesh Bhika Choudhari .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr.Mohan Rawat for the applicant.
Mr.S.V.Gavand, APP for the State.
API Shri Kadam from Crime Unit, Navi Mumbai present.

CORAM: BHARATI DANGRE, J.
DATED : 23rd SEPTEMBER, 2022

P.C:-

1 The applicant is charged for the offence punishable u/s.420, 380 r/w Section 34 IPC and he came to be arrested on 15/2/2021 and since then, he is incarcerated.

2 The subject C.R came to be registered at the instance of one Tarabai Patil, who stated that, on 1/1/2021 at about 1.30 in the afternoon, three unknown persons entered into the house under the pretext that they were interested in hiring one of the rooms and when she accompanied two persons on the top floor, the first person went down in the house and when she went into the bedroom, she found the Almirahs were open and all her belongings were pulled out. She noticed that her gold ornaments

were stolen, which she estimate to be priced at Rs.4,05,000/-. She gave the physical description of the three persons.

The two accused persons came to be arrested as they were already incarcerated in some other crime. The learned counsel for the applicant has invited my attention to paragraph no.16 of the order passed by the Addl. Sessions Judge, Borivali Division, while rejecting his Bail Application where the Investigating Officer has submitted that at the time when the alleged offence took place, the applicant had come to the police to register case against his wife. He makes a statement that it was only to distract the police to create a defence of alimony. Unfortunately, the Sessions Judge failed to consider this circumstances and express that he has refrained himself from making any comment on this aspect.

3 When the learned APP is asked to show the material which would establish the identity of the applicant as one of the accused who was present when the theft was committed, he would rely upon a CCTV footage drawn from a lane leading to the house of the applicant.

When asked, who has identified the applicant in the CCTV footage, the learned APP states that there is no specific identification. When asked, whether there is any material in the charge-sheet, where the complainant has identified the applicant as one of the accused, the answer is, there was no Test

Identification Parade. It is surprising that without focussing on this aspect of the matter, the investigation is complete and the charge-sheet has been filed and the applicant face charge u/s.380, 420 r/w Section 34 IPC.

4. Since the prosecution has prima facie failed to establish the accusations levelled against the applicant, he deserve his release on bail.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

Hence, the following order:-

ORDER

- (a) The Applicant – Mahesh Bhika Choudhari in connection with C.R.No.I-1/2021 registered with APMC Police Station, Navi Mumbai, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or more sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police

Officer. The Applicant should not tamper with evidence.

(c) The Applicant shall attend the trial on regular basis.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)