

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.105 OF 2022

Nareshkumar s/o Amarsing Chaudhari and another
Vs.
State of Maharashtra Through its Police Station Officer, Police Station,
Khamgaon (Rural) District Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V. R. Mishra, Advocate for applicants.
Mr. H. D. Dubey, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 07/03/2022

1. Heard Mr. Mishra, learned counsel for the applicants and Mr. Dubey, learned APP for non-applicant/State.

2. The applicants are arraigned for the offence punishable under Section 461 and 380 read with Section 34 of the Indian Penal Code in Crime No.290 of 2021. The incident is dated 29.07.2021 in the night time and the FIR is lodged on 30.07.2021. The applicant no.1 has been arrested on 26.08.2021 and the applicant no.2 on 06.09.2021.

3. Mr. Mishra, learned counsel for the applicants submits that there are no eyewitnesses to the incident and merely on the basis of a recovery made in Crime No.388 of 2021, in which currency notes to the tune of Rs.15,78,250/- as well as gas cutters, vehicle and

cylinder have been recovered from the applicant no.1, the applicants have been roped in the present offence also. He further submits that in Crime No.388 of 2021 the applicant has been released on bail and therefore, the applicants are to be released in the present matter also.

4. Mr. Dubey, learned APP for non-applicant/State submits that the applicants along with other co-accused have formed the gang for the purpose of stealing ATM machines as well as the cash kept therein. The applicants in the instant matter, are also accused in Crime No.388 of 2021, in which there is a substantial recovery from them. He submits that in the present matter also, under Section 27 of the Indian Evidence Act, a cash amount of Rs. 30,000/-, Mobile Phones, SIM Cards, Oxygen Cylinders, the Trays used for storage of currency notes in ATM machine, LPG Cylinder, a four-wheeler have been recovered, which equally indicate the involvement of the applicants and the application needs to be rejected.

5. On the fateful day, the ATM of State Bank of India at Palshi Bk., Taluka Khamgaon, Dist. Buldhana, in which there was cash of about Rs.20,96,500/-, was broken into & robbed, in which, the present applicants have been arrested on 26.08.2021 and 06.09.2021 respectively. As indicated above, recovery under Section 27 of the Indian Evidence Act has been made, in which the material used for the offence including the vehicle as well as the cash of Rs.30,000/- has been seized from

them. That apart, the applicants are also involved in a similar offence in Crime No.388 of 2021, in which there is a seizure of more than Rs.15,00,000/- from them. The conspectus of the charge-sheet, would indicate that the applicants have formed a *modus operadi* breaking ATM machine and robbing public money, considering which, I am not inclined to accept the application, the same is accordingly rejected.

JUDGE

Sarkate