

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

CRIMINAL APPLICATION (BA) NO.255 OF 2022

Shivaji s/o Sakharam Gaikawad

Vs.

The State of Maharashtra through Police Station Officer, Police Station, Sakharkheda
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. A. P. Tathod, Advocate for applicant.
Ms. T. Udeshi, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/04/2022

Heard Mr. Tathod, learned counsel for the
applicant and Ms. Udeshi, learned APP for non-
applicant/State.

2. The applicant has been arraigned for the
offence punishable under Section 379 read with Section
34 of Indian Penal Code in Crime No.357 of 2021.

3. Mr. Tathod, learned counsel for the
applicant submits that claim in the present case is of
having stolen oxygen cylinder from the shop of the
complainant which subsequently has been used for the
purpose of robbery in the State Bank of India, Kelvad
Branch. In so far as, the allegation regarding robbery is
concerned, the applicant is already released by an order

dated 13.01.2022, in Crime No.692 of 2021. He further submits, that there is nothing on record to indicate that it was the applicant, who had stolen the oxygen cylinder from the shop of the complainant, as allegedly the incident has been taken place in the night time, when the shop was closed. He therefore submits, that since the connection has not been established, *prima facie* the applicant is entitled to bail.

4. Ms. Udeshi, learned APP for non-applicant/State opposes the application and submits that the link has been established due to the confessional statement of the applicant which has been recorded by the investigating agency during the course of the investigation, and therefore, the application be rejected. She however does not dispute the applicant was released on bail in Crime No.692 of 2021.

5. It is a settled position of law, that the confessional statement made by the accused cannot be used against him, apart from which, since the incident had taken place in the night time, when the shop was closed and there were no one present, the alleged link with the applicant regarding the theft of the oxygen cylinder is tenuous, considering which, a case for bail is made out. Hence, the following order.

ORDER

(i) The applicant be released on bail in Crime No.357 of 2021 registered with Police Station Sakharkheda, District Buldhana, for the offence punishable under Section 379 read with Section 34 of the Indian Penal Code, on his executing PR. bond of Rs.50,000/- (Rupees Fifty thousand) with two solvent sureties of the like amount.

(ii) The applicant shall not, directly or indirectly make any attempt to influence the witnesses or otherwise tamper with the prosecution evidence.

(iii) The applicant shall not be involved any single offence in any nature of whatsoever, and any such involvement shall result in cancellation of bail.

(iv) The applicant shall attend each and every date before learned Magistrate, and also keep in touch with the Investigation Officer as well as at all times inform the learned Magistrate of his residence and telephone/mobile number.

JUDGE*Sarkate*