



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

946 BAIL APPLICATION NO. 2243 OF 2023

KARTARSINGH AACHALSINGH DUDHANI
....Applicant

VERSUS

THE STATE OF MAHARASHTRA
.....Respondent

AND

BAIL APPLICATION NO. 2149 OF 2023

AKSHAY @ RAUDI S/O POPATRAO PADULE
....Applicant

VERSUS

THE STATE OF MAHARASHTRA
.....Respondent

....

Advocate for Applicants : Mr. Kartik Mundhe h/f Mr. Manyar
Irfan D.

APP for Respondents: Mr. A.S.Shinde

...

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 19.12.2023.

PER COURT :

1. The applicants seeks regular bail in connection with Crime No. 176 of 2023 registered with Kotwali police station, District Parbhani for the offences punishable under sections

394, 395, 411, 457 r/w 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by Bhagwat Uddhav Kadam. It is alleged that on 29.06.2023, while he was in deep sleep at about 3.40 a.m. he heard screaming, when he woke up, he found 3 persons in his bed room holding deadly weapons like knife, sickle and rod. They were wearing jackets of different colours. One of them assaulted him by knife head. He suffered bleeding injury. They demanded money and took search of the cupboards. They snatched gold chain, bangles and ear rings of his wife Surekha, along with cash amount of Rs. 96,000/-. When his mother rushed to his room, her gold chain, ring and other ornaments were snatched. The Cash amount of Rs. 50,000/- is forcibly possessed from her. Then they left the place in a four wheeler. Accordingly an offence came to be registered against unknown accused persons. The applicants have been arrested in pursuance of the aforesaid crime on 01.08.2023. They were remanded to police custody and presently they are in M.C.R. On completion of investigation, charge-sheet has been filed. Their plea for grant of bail has been rejected by the learned Sessions Court on 04.11.2023.

3. The learned Advocate appearing for the applicants vehemently submits that the applicants have been falsely implicated owing to their criminal antecedents. There is nothing to bring home the complicity of the applicants with in commission of the offence. The recovered articles shown from applicant they are depicts instruments normally available for common use. The test identification parade is conducted after 51 days of the arrest. It is ineffective and contrary to the guidelines. As such, he submit that the further detention of the applicants need not be continued.

4. The learned APP strongly opposes the prayer. He would point out that the applicants are hardened criminals and previously involved in similar offences. The first informant identified both the applicants/accused persons during the test identification parade. The CCTV footage is available and a pen drive is seized during the course of investigation. However, the details are sent for verification to the forensic lab. On all these counts the learned APP urges to reject the prayer for grant of bail.

5. Having considered the submissions advanced,

apparently FIR has been registered against unknown culprits. The applicants and co-accused have been arrested on 01.08.2023. However, there is nothing in the entire charge-sheet as to how police suspected the applicants and co-accused to be the culprits of the offences. Perhaps the criminal history of the applicants was a clue for such arrest. The investigation papers contains the recovery of certain articles under the seizure panchanama. The list of the articles recovered shows that some cutters, screw drivers and mobile phones which are the articles of common use. It is difficult to link recovery with offences. The next circumstance relied by the prosecution is so called identification parade. Apparently it is carried after 51 days of the arrest of the applicants. It is trite that the identification parade has to be carried at the earliest and in accordance with the guidelines prescribed. Both the aforesaid aspects are mislead in present case. The recovery of any incriminating articles could not be secured during the investigation. Although it is contended that the CCTV footage is available, the transcript of such CCTV footage is not made as a part of the charge-sheet. In given case identification parade of the applicants as culprits may be a corroborative piece of evidence, but in absence of any other clinching evidence it

looses sanctity, Resultantly, the material in the charge-sheet is bereft to make out offence against the applicants. The observations made above are on prima-facie considerations of the material in the charge-sheet and are restricted only for the disposal of the present application. As such, a case is made out for grant of bail subject to certain conditions. Hence, following order :

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicants –1) Kartarsingh S/o Aachalsingh Dudhani and 2) Akshay @Raudi s/o Popatrao Padule, be released on bail in connection with Crime No. 176 of 2023 registered with Kotwali police station, District Parbhani for the offences punishable under sections 394, 395, 411, 457 r/w 34 of the Indian Penal Code on their furnishing P.B. & S.B. of Rs.1,00,000/- (Rs. One Lakh), each on the following conditions :-
 - a] The applicants shall not tamper the prosecution evidence.
 - b] The applicants shall attend the trial Court on each and every effective dates of hearing.
 - c] The applicants shall furnish the details of their residential addresses and

contact numbers with the concerned Investigating Officer and shall update the same till the conclusion of the trial.

iii. Bail applications are accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

mahajansb/