

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

CRIMINAL BAIL APPLICATION NO. 143 OF 2023

1. Mohammed S/o Khurshid
Age : 26 Years, Occupation : Labour,
Residing at : Post Punahana, Paima Road,
Paima Khera, 233, District : Mewat,
State : Haryana, Pin Code : 122508.
2. Mohd. Naseem Mohd. Abbas,
Age : 24 Years, Occu. Labour,
Residing at : Post Punahana, Paima Road,
Paima Khera, 233, District : Mewat,
State : Haryana, Pin Code : 122508. ...Applicants

vs.

The State of Maharashtra
[At the instance of Kasarwadavali
Police Station vide C.R. No.253 of 2022]. ...Respondent

Mr.Visshaal Dadasaheb Khetre – Advocate for Applicant No.1 (VP not filed).

Mr.Shantanu Phanse i/b. Mr.Nikhil S. Gole – Advocate for Applicant No.2.

Mr.A.R.Kapadnis – APP for the Respondent-State.

Mr.Nagesh Pisal – PSI – Kasarwadavali Police Station – Thane City.

CORAM : S. M. MODAK, J.

DATE : 31st MARCH, 2023

P. C. :-

1. Though initially, learned Advocate Shri.Nikhil Gole filed this

Application for both the Applicants, yesterday it is pointed out that learned Visshaal Khetre now will argue on behalf of the Applicant No.1 - Mohammed Khurshid. It is also submitted that NOC of learned Advocate Shri.Gole is obtained. It is confirmed by learned Advocate Shri.Phanse and he submitted that now, he will argue for Applicant No.2 only. Accordingly, I have heard them and learned APP for the Respondent-State.

2. Both these Applicants were initially arrested in an offence registered in the State of Assam. They were arrested on similar allegation of breaking the ATM centres and stealing the cash. On suspicion, both of them came to be arrested by Kasarwadavali Police Station in C.R. No. 253 of 2022. It is on the complaint of one Bansilal Gupta. He lodged the complaint on 22nd June, 2022 against the unknown persons. After investigation, involvement of 5 Accused persons is confirmed. Out of them, present two Applicants are two Accused persons. Charge-sheet is filed for the offences punishable under Sections 454, 457, 380 read with 34 of the Indian Penal Code, 1860 [“IPC”].

3. Both learned Advocates for the Applicants submitted that in fact, there is no iota of materials to charge-sheet both these

Applicants and the suspicion which was there at the time of arrest continued the suspicion only. Whereas, according to them, a statement given by arrested Accused person – Nissar Khan (Page No.76) on 2nd August, 2022 recorded by Mira Road Police Station in C.R. No. 254 of 2022 cannot be considered against these Applicants for two reasons. One is this is not recorded in the present offence and second is nothing is recovered except certain instruments used while committing the offence.

4. Whereas, according to learned APP, the statement is given in another offence can also be considered in different offence if he has confessed about that offence. It is true that all these Applicants have not given that statement. Furthermore, except the instrument, nothing incriminating is recovered at his instance. There were C.C.T.V, cameras installed but they were not working. Even Test Identification Parade [“TIP”] is not conducted. The Court of Additional Sessions Judge – Thane rejected their Application for the reason that huge amount of Rs.11,50,000/- was involved and the Applicants are habitual and that will be threat to the economy.

5. This Court feels that on that ground, the request for bail cannot be rejected. Barely, Court has to see what are the materials

showing the involvement of the Applicants. Unfortunately, it is not there. So, merely because they are involved in other offences, bail cannot be denied. They are the resident of Haryana, so certain conditions are required to be imposed so as to secure their presence before the trial Court. Hence, following order is passed :-

O R D E R

- (i) Application is allowed.
- (ii) Applicants Mohammed S/o Khurshid and Mohd. Naseem Mohd. Abbas be released on bail in connection with C.R. No. 253 of 2022 registered at Kasarwadavali Police Station – Thane on furnishing personal bond and surety bond of Rs.15,000/- each.
- (iii) They are directed to give attendance to Kasarwadavali Police Station once in three months preferably on First Saturday from 10.00 to 12.00 till completion of the trial.
- (iv) Applicants are further directed to intimate the Kasarwadavali Police Station about their whereabouts and to intimate them prior to leaving Thane.
- (v) In case of breach of any of the conditions, bail of the Applicants are liable to be cancelled after notice.

6. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in

accordance with the law, uninfluenced by the observations made in this order.

7. Learned Advocate Shri.Visshaal Khetre undertakes to file power within one week.
8. Application is disposed of in the aforesaid terms.
9. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]