

VRJ

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

BAIL APPLICATION NO.419 OF 2023

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Sagar Kailas Ahire

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Jayendra D. Khairnar with Mr. Mufeez Ansari with
Adv. Ankita Hajare for the applicant.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 31, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973 in connection with C.R. No.550 of 2021 registered with Jaykheda Police Station, Taluka Baglan, District Nashik for offences punishable under sections 302, 396, 120-B read with section 34 of the Indian Penal Code, 1860.

2. According to the prosecution, the applicant along with remaining co-accused who are absconding jointly committed dacoity and committed murder of informant's husband. According to the prosecution, on 19th September 2021 at 21:00 hours, the applicant along with five other co-accused came together and performed reky of the house of the informant. At that time, co-accused Suresh, Manoj and Dondhya shown them the house of

the informant by stating that two aged persons are residing their and are having amount of Rs.50 Lakh in their house. Accordingly, principal offender Kalu and others has conspiracy to commit theft in the said house. In furtherance of the said conspiracy, the applicant along with other co-accused again performed recky of the informant's house and went back. Finally on 22nd September 2021, the accused persons came at the house on the motorcycle of the applicant and other co-accused and committed dacoity and murder of the informant's husband.

3. Role attributed to the applicant is that he carried co-accused on his motorcycle to the place of incident on 19th September 2021 and actively participated in the dacoity. The applicant was arrested on 26th September 2022.

4. Learned advocate for the applicant submitted that the role attributed to the applicant is of transporting the co-accused to the place of incident on 19th September 2019. Though the allegations of active participation in the incident and in the conspiracy are made, there is no material to support the said allegations. Co-accused Suresh, Manoj and Dondhya have been released on bail by this Court. The applicant has no criminal antecedents. He, therefore, prayed for release of the applicant on bail.

5. Per contra, learned APP submitted that the applicant actively participated in the incident. The applicant's presence at the spot is established by CDR. The chart placed on record indicates constant communication between the co-accused. Due to his participation in the conspiracy and active role played by the applicant in the

incident, the bail application deserved to be rejected.

6. With the assistance of advocate for the parties, I have scrutinized charge-sheet and material on record. The material on record prima facie indicates that the applicant transported accused persons along with other persons to the spot of incident. Role attributed to the applicant is that he carried co-accused to the place of incident on 19th September 2021. At this stage, there is no sufficient evidence against the applicant to indicate his active role in the incident of assault. Three co-accused named in the report have been identified by the informant. None of the witness has stated that the applicant was present inside the house while offence under section 302 was committed. Therefore, at this stage, role of the applicant needs to be considered in the context of sections 34, 120-B and 395 of the Indian Penal Code, 1860. In so far as sections 34 and 120B is concerned, the trial Court needs to adjudicate upon this issue at the time of trial. Therefore, on overall reading of the material on record, it appears that the applicant has made out a case for his release on bail.

7. The applicant is in jail from 26th September 2022. There are no criminal antecedents to the discredit of the applicant. Moreover, co-accused Suresh, Manoj and Dondhya have been released on bail. Considering the pendency of the matters, it is unlikely that the trial may be finished in near future. Hence, following order:

a) The applicant Sagar Kailas Ahire be released on bail in connection with C.R. No.550 of 2021 registered with Jaykheda Police Station, Taluka Baglan, District Nashik for

offences punishable under sections 302, 396, 120-B read with section 34 of the Indian Penal Code, 1860, on furnishing P.R. Bond in the sum of Rs.25,000/- along with one or two sureties in the like amount;

b) The applicant shall attend each and every date before the Trial Court unless specifically exempted by the Court;

c) The applicant shall mark his presence before the investigating officer on first Saturday of each month between 11.00 a.m. to 02.00 p.m. till the completion of the trial;

d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.

8. The bail application stands disposed of in above terms.

(AMIT BORKAR, J.)