

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

BAIL APPLICATION NO. 3525 OF 2022

Motilal Kishanlal Gurjar ...Applicant

vs.

The State of Maharashtra ...Respondent

**ALONG WITH
BAIL APPLICATION NO. 1329 OF 2022**

1. Prakashchandra Sohanlal Gujar

2. Shankarlal @ Sampat Madhavlal Jatt ...Applicants

vs.

State of Maharashtra ...Respondent

Ms.Zehra Charania i/b. Ms.B.B.Jain – Advocate for Applicant in BA No.3525 of 2022.

Mr.Manas Gawankar a/w Mr.Kartik Garg i/b. Mr.Mohammad Saifan Mula – Advocates for Applicant in BA No.1329 of 2022.

Mr.S.R.Agarkar – APP for Respondent – State.

CORAM : S. M. MODAK, J.

DATED : 19TH AUGUST 2023

P. C. :

1. Heard learned Advocate for the Applicant – Prakashchandra Gujar who is Accused No.1 and Applicant No.2 – Shankarlal @ Sampat Jatt who is Accused No.5 in Bail Application No.1329 of 2022 and learned Advocate Ms.Zehra Charania for Applicant – Motilal Gurjar who is Accused No.2. Also heard learned APP

Satish Sangar

2. Initially, an offence is registered with Rabale Police Station – Navi Mumbai on 14th November, 2021 on the complaint of one Prakash Babel. It is registered under Sections 201, 342, 392, 452 read with Section 397 of Indian Penal Code, 1860 [“IPC”] as well as under Sections 3 read with 35 of the Arms Act, 1959 and under Sections 37(1)(a) read with 135 of the Maharashtra Police Act, 1951. There was a robbery committed in Ambika Jewellers, Shop No.17, Gurudevdatto Society, Ghansoli on 14th November, 2021 at about 1.15 hours in the afternoon. Two persons entered in the shop by pretending to be customers. One of them has taken out a revolver is the Applicant Motilal as per the case of the Prosecution. Whereas, third person was standing outside the shop. He closed down the shutter of the shop. The said person had visited the shop earlier on the pretext of purchasing certain ear rings. Two persons who have entered the shop had masked their faces.

3. They have taken the ornaments, mobile handsets, ornaments weighing about 1556 grams and silver articles weighing 22 kg, in all amounting to Rs.77,85,927/-. While committing robbery, those robbers have also taken out DVR of the C.C.T.V. camera.

4. The offence is investigated by the Crime Branch – Navi Mumbai and the charge-sheet is filed against in all 5 persons. They

have added Section 395 of the IPC. Their conclusion is that out of 5 Accused, 3 of them i.e. Accused Nos.2, 3 and 4 were at the spot. Whereas, Accused Nos.1 and 5 joined them later. Majority of the robbed property is recovered from Accused Nos.1 and 5.

5. Learned APP pointed out the following materials against the Applicants :-

- (a) There is additional statement of the First-Informant Prakash wherein he has explained as to exactly how much property is robbed. It is 1747.80 grams costing Rs.61,35,150/-.
- (b) There is C.C.T.V, footage seizure panchnama dated 16th November, 2021 (Page No.51) wherein footage from adjoining society Gurudevdat is collected. In those footages, in all 3 persons were seen. All of them were coming out of shop and they were possessing gunny bags.
- (c) There is arrest panchnama of Applicants Motilal and Prakashchandra and other Accused persons.
- (d) During personal search of Applicant – Prakashchandra, mobile handsets were seized and from Motilal also, certain mobile handsets were seized.
- (e) There is memorandum panchnama at the instance of Applicant Prakashchandra on 23rd November, 2021 (Page No.70) wherein he has shown the place wherein he has concealed the clothes worn by him and robbed ornaments.
- (f) There is personal search panchnama of Applicant – Shankarlal dated 26th November, 2021 (Page No.88) and certain ornaments were seized from his person.
- (g) There is memorandum panchnama at the instance of Applicant – Motilal dated 1st December, 2021 (Page

No.112). At his instance, certain ornaments were seized.

- (h) There is one more memorandum panchnama at the instance of Applicant – Motilal dated 4th December, 2021 (Page No.120) wherein he has shown the route by which they have planned to commit dacoity and how they have travelled after the incident.
- (i) There is a statement of one Bharatsinh Rajput dated 1st February, 2022 (Page No.211). He has handed over his air gun to the Applicant – Motilal and Motilal has handed over it back to him.
- (j) There is seizure panchnama about that air gun dated 1st February, 2022 from the said witness (Page No.126).
- (k) There is seizure panchnama of a pendrive containing the C.C.T.V., footages from the camera installed at Godavari Lodge – Nashik (Page No.131).
- (l) There are screen shots from those footages at Godavari Lodge on Page No.188 onwards.
- (m) There are statements of witnesses mainly auto rickshaw driver in order to show how 3 dacoits from Navi Mumbai have first travelled to Thane and then to Kalyna.
- (n) There is a statement of witness who is driver of the echo car in which the dacoits have travelled from Kalyan dhaba to Nashik. These statements are on Page Nos.144, 145, 146 and 148.
- (o) There is a supplementary statement of Prakash Babel on Page No.47 about resealing the seized muddemal. Those golden and silver ornaments wherein he has also identified them as belonging to his shop Ambika Jewellers (Page No.47).
- (p) There is a '*test identification parade*' conducted on 25th January, 2022 wherein the present Applicant – Motilal is identified as one of the persons present at the spot.
- (q) There are statements of the witnesses i.e. the First-

Informant and auto rickshaw driver who has identified the Applicant – Motilal in the parade.

6. Learned APP submitted that on the basis of above materials, the involvement of all these Applicants is shown and if any lacunae are there, this is not a stage to consider them.

7. Learned Advocate Shri.Gawankar for the Applicants in Bail Application No.1329 of 2022 made the following submissions :-

- (a) His two Applicants Prakashchandra and Shankarlal were not amongst 3 dacoits who were seen at the spot.
- (b) There are lacunae in the memorandum statement of Applicant – Prakashchandra and personal search panchnama of the Applicant – Shankarlal.
- (c) It is submitted that for almost two and half years, they are behind bar and yet the charges are not framed.
- (d) If the ornaments alleged to be seized from these Applicants are considered, it is much more than what is stated by the First-Informant in the FIR in additional statement.
- (e) It is submitted that the witnesses from Godavari Lodge were not called for the parade and except the Applicant – Motilal, the witness has not stated about other Applicants.
- (f) The witness Kalpana Thorat on Page No.172 has never said that Applicant Prakashchandra Gujar was working in the jewellery shop. (This statement is relied upon by the Prosecution in order to show that the Respondent-Accused persons used to stay in one room owned by Kalpana Thorat.

8. Learned Advocate Ms.Jehra Charania for the Applicant in Bail

Application No.3525 of 2022 made the following submissions :-

- (a) *'Test identification parade'* is conducted on 25th January, 2022 which is after a long gap from the date of arrest on 23rd November, 2021.
- (b) There is a recovery of few of the ornaments at the instance of Applicant – Motilal on 1st December, 2021. But, the First-Informant has not identified them which is clear from resealing panchnama dated 4th December, 2021.
- (c) Though the witness Bharatsinh Rajput has said about handing over air gun to the Applicant – Motilal and though it is seized, the so-called eye witnesses have not said about air gun but they have said about pistol.
- (d) The statements of so-called rickshaw drivers are recorded on two occasions. First, prior to the parade and second one, after the parade. However, the statements earlier to parade, were recorded after the present Applicant was arrested.

9. So far as the Applicant – Motilal is concerned, after hearing both of them, what I find is that there is a recovery of ornaments at his instance. Furthermore, there is statement of witness Bharatsinh Rajput who has handed over air gun to the Applicant – Motilal. It is pertinent to note that the Prosecution case against Motilal is that he was one amongst the two dacoits who have entered the shop and he has shown the pistol. It is important to note that at Godavari Lodge, the Aadhar card of the present Applicant – Motilal was produced. It is on Page No.204 and there is an entry in the hotel – Godavari

register in the name of Applicant – Motilal. No doubt, it is true that the First-Informant has said that 3 dacoits have masked their faces. So, the contention was that how they can be identified in the parade. What I feel is that whatever lacunae are pointed out in the seizure panchnama, variance in the weapon, statements of rickshaw drivers recorded after arrest cannot be considered at this stage. The Court has to see whether the material suggests about prima facie involvement. If all these materials are considered, involvement of Applicant – Motilal is certainly there. So, he has not made out a case for bail.

10. So far as Applicant - Prakashchandra and Shankarlal are concerned, even though the Prosecution does not claim that they were present on the spot, at the instance of Prakashchandra and during personal search of Shankarlal, ornaments were seized and they were identified by the First-Informant. There is a contention raised that at the most, they can be considered as receivers of stolen property. The Police have not applied Section 411 of IPC. On the basis of material shown to me by the learned APP, there is reason to believe that these two Applicants have also travelled along with other dacoits from Navi Mumbai to Nashik. So, at this stage, they simply cannot be said to be receivers of stolen property. Receiver is a

person who is not involved in the offence of robbery or dacoity or is not aware that robbery or dacoity has taken place.

11. The materials referred above show that these two Applicants are not simply receivers of the robbed property but they were aware about the offence of dacoity. They have joined other Accused at Nashik. So, both of them are also not entitled for bail.

12. It is true that the offence is not punishable with death. They are behind bar since November-2021. If there is no progress in the trial, they can be granted liberty to apply again.

13. In view of the above, following order is passed :-

ORDER

- (i) Both Applications are dismissed.
 - (ii) If there is no progress in the trial for one year from today, they are entitled to apply again for bail which includes ; (a) non framing of charge ; (b) non examining the witnesses.
14. Copy of the order be communicated to the concerned Court.
15. These are my prima facie observations. Let the learned trial Court need not be influenced by them.
16. Applications are disposed of in the aforesaid terms.
17. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]