

AGK

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

BAIL APPLICATION NO.2106 OF 2022

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Maruti Alias Kaka Nana Wayal

... Applicant

V/s.

The State of Maharashtra

... Respondent

Ms. Shubhangi Parulekar for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/
State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2023

PC.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in relation with C.R. No.992 of 2021 registered with Yawat Police Station under Section 394, 397 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(25) of the Arms Act.

2. According to prosecution, on 13 November 2021 at 7.00 p.m., informant was proceeding on the motorcycle towards Padvi. When he reached Padvi Phata, two unknown persons came on motorcycle and obstructed him to proceed further. One of them, who wore blue shirt put the knife on the neck of the informant and asked him to give whatever belonging with him and thereby took mobile gold chain and two gold rings from him. When informant

tried to resist, the accused caused injury by means of knife on the wrist and neck of the informant. The informant requested both accused to take all his belongings but not to assault him. Then one four wheeler car came and in its head light informant has seen the faces of said accused. Said accused fled away from the spot on their motorcycle. Ome Amol Shitole who came in car tried to chase the accused but they did not come in his hand. Amol Shinde made phone call to the father of the informant, who immediately rushed on the spot and brought him to Sai Darshan Hospital, Boriparthi, Daund for medical treatment. On 14 November 2021 at about 00.58 a.m. informant lodged report of the incident. Accordingly, first information report came to be lodged. During investigation, the accused were arrested on 15 November 2021. They were released on bail by order dated 22 December 2021. Bail granted to accused is cancelled and he was remanded to MCR from 22 December 2021.

3. Learned Sessions Court by order dated 6 June 2022 rejected the application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973.

4. Learned advocate for the applicant submitted that in the Test Identification Parade, the applicant is not identified by the eye-witness who had allegedly seen faces of the accused persons at the time of incident. The Test Identification Parade was without following prescribed procedure. Supplementary statement of the informant after Test Identification Parade is not recorded. The recovered gold ring from the applicant is of 5 gms, whereas the first information report alleges snatching of 15 gms gold ring. The

applicant was also granted bail in the present first information report; however, after cancellation the applicant was again arrested on 22 December 2021. He is inside jail for more than one and half years.

5. Per contra, learned APP submitted that the applicant has three similar antecedents. There is recovery of 5 gms gold ring from the applicant. The offence alleged is serious in nature.

6. On perusal of the material on record, it appears that in the Test Identification Parade, eye-witness has failed to identify the applicant. The investigating agency has not recorded supplementary statement of eye-witness attracting specific role to the applicant. Though there is recovery of 5 gms. Of gold ring from the applicant, the robbed gold ring weighs 15 gms.

7. The applicant is in jail from 22 December 2021. There is no sufficient material at this stage to connect the applicant with the offence in question. However, it is for the prosecution to prove the identification of the applicant during trial. Charges are yet to be framed. It is unlikely that the trial will commence in near future. Therefore, continuation of detention of the applicant cannot be permitted. Hence, following order:

a) The applicant be released on bail in relation to C.R. No.992 of 2021 registered with Yawat Police Station under Section 394, 397 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(25) of the Arms Act on furnishing P.R. Bond in the amount of Rs.25,000/- along with one or two sureties in the like amount;

- b) The applicant shall mark his presence with the concerned police station on first Saturday of every month till conclusion of trial;
 - c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
 - 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 not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - f) 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. No costs.

(AMIT BORKAR, J.)