

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

BAIL APPLICATION NO. 4363 OF 2021

Pawankumar Govindprasad Sharma	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Sanjeev P. Kadam a/w Pratik P. Deshmukh i/by Mr. Prashant P. Raul - Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 11th JULY, 2023

P. C. :-

1. Heard learned Advocate Shri Kadam for the Applicant and learned APP. The investigating officer is present.
2. The allegation is that the present Applicant has conspired with two accused persons, to commit robbery in the house of one Sunita Upadhyay, she is wife of one Ramprakash Upadhyay, who manufactures an Ice-cream. The incident took place on 02/11/2020, at about 18.30 hours. The first informant residing at Shanti Nagar Sector No. 2, Mira Road, District Thane. Two unknown persons entered the house, they were possessed with weapons like screw driver. Three daughters and the first informant were detained in bath

room. Those two persons have robbed money kept in the bedroom. Originally, it was five lakhs but subsequently in her supplementary statement, she has stated more amount.

3. The F.I.R. is registered with Naya Nagar Police Station under Sections 394, 506, 120-B read with 34 of the Indian Penal Code against unknown persons. During investigation, the Applicant came to be arrested. Admittedly, at the instance of this Applicant, there is no recovery.

4. The prosecution relied upon the following circumstances:-

- a) Statement given by one Mandipkumar Sharma at page no. 80. The present Applicant alongwith two arrested accused person went to his shop. The present Applicant introduced them with the witness as they were intending to start the ice-cream shop. Those persons were Nardev Yadav and Sonu Ramvir. Subsequently, those two persons were identified in the CCTV footages by this witness as robbers.
- b) There is memorandum statement of this Applicant wherein he has shown readiness to show the spot wherein he has kept the money came to his share. However, there is no recovery.
- c) Call details report showing the presence of this

Applicant in and around the spot.

5. Learned Advocate Shri Kadam pointed out the lacunae so as to say that the first informant was not sure of the exact amount looted and wrong invocation of Section 394 of the Indian Penal Code. It is true that there is no allegation that the present Applicant actually committed robbery but materials point out about hatching conspiracy.

6. Conspiracy is always hatched clandestinely. But above materials are sufficient at this stage to believe prosecution case. So I am not inclined to grant him bail. He is behind bar since 2020. If trial will not commence within the period of one year from today, the Applicant is at liberty to ask for bail again. Copy be send to concerne court.

7. These are my *prima-facie* observations.

[S. M. MODAK, J.]