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

BAIL APPLICATION NO.4409 OF 2021

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Tushar Baban Tambe

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. K.N. Shermale for the applicant.

Mrs. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2023

PC.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 in connection with C.R. No.665 of 2021 registered with Yavat Police Station for offences punishable under Section 395 of the Criminal Procedure Code, 1973.

2. According to prosecution, the informant, Hitendra Balasaheb Jadhav was working with a courier company. On 2 August 2021 at about 5.00 p.m. when the informant was travelling with cash of Rs.26 lakh in a State Transport bus along with witness Vikas Janardan Bobade, another witness Santosh Manohar Bobade boarded the bus. Around 1.15 a.m. the bus was halted and three persons boarded the bus. They inquired with the conductor about the passengers having pass. On being pointed out by the conductor towards informant and other witnesses, the persons assaulted and

dragged them out of the bus. They took bags containing cash and mobile phone from the informant and other witnesses and told them that police patrolling vehicle would be coming and they need to see them at police station. Two persons ride army colour bullet motorcycle and two persons fled on a scooty-like motorcycle.

3. On complaint being filed, the investigating agency completed the investigation by effecting recovery, seizure of goods and conducting Test Identification Parade (TIP). The applicant is arrested on 6 August 2021.

4. The applicant applied for bail under Section 439 of the Criminal Procedure Code, 1973 which came to be rejected by order dated 26 November 2021.

5. According to the learned advocate for the applicant, TIP has been conducted without following procedure. There is delay of two months in conducting TIP. The material to connect cash recovered from the applicant is insufficient to link him with the crime money as number of the notes have not been mentioned. According to him, the mobile phone recovered is of different make. The swift car is recovered from the applicant, however, it is of no relevance to connect the applicant with the commission of crime. In the injury certificate, there are no injuries to the informant or other witnesses. The rejection of bail of co-accused has no effect on consideration of the applicant's case on merits as doctrine of parity is inapplicable to the rejection of bail.

6. Learned APP pointed out statement of witnesses to connect description and articles recovered in the report. The khaki colour

uniform worn by the accused persons connect applicant with the owner of uniform who has stated that the applicant collected the uniform. Another witnesses has stated borrowing of khaki colour bullet vehicle by the applicant. The TIP, at this stage, needs to be relied upon.

7. On perusal of the material on record, it appears that in the first information report the informant has specifically stated that four persons fled the spot of incident on army colour bullet vehicle and white colour scooty-like vehicle. Two witnesses have stated that the applicant on 1 August 2021 had borrowed his bullet having army colour and another witness stated that the applicant called on his mobile bearing number 97645 29244 from applicant's mobile number 70400 95700. He stated that he handed over uniform of homeguard having khaki colour and fiber stick to the applicant. The articles mentioned in the FIR correspond to the statement of Ganesh Shankar Tambe. Similar is the state of another witness Surjeet Aaba Mapare who stated that his uniform in khaki colour was borrowed by the applicant. Surjeet Aaba Mapare received a call from applicant on his cell phone. Corresponding material to connect mobile numbers of the applicant and the witness are on record.

8. At this stage, though the motorcycle and uniform are not recovered from the applicant; however, the statement of independent witnesses who prima facie own the uniform and vehicle have stated that it is the applicant who took the uniform and vehicle used for commission of alleged crime. Apart from this, at this stage, the TIP connects the applicant with the crime. The

question of delay in conducting the TIP can be considered at the time of trial. However, the material on record in the form of statement of witnesses to show complicity of the applicant in relation to crime.

9. Learned advocate for the applicant relied upon the judgment in the case of **Satrughana Alias Satrughana Parida & Ors. v. State of Orissa** reported in (1994) SCC (Cri) 1424. On consideration of the said judgment, it appears that apart from the fact that no absolute legal proposition of law is being laid down, the facts of the case indicate that the case arose out of appeal arising out of full-fledged trial. Therefore, observations, if any, made by the Apex court in an appeal arising out of trial are not relevant for the purpose of deciding bail application unless the observations made lay down legal exposition of law.

10. At this stage, learned advocate for the applicant relied upon order of this Court in Bail Application No.1737 of 2021 decided on 22 November 2021. It needs to be noted that in the order no principle of law arose for consideration and no principle of law was laid down. It is well settled that an order of bail application is summary in nature based on summary facts which can never be relied as a precedent or can be cited as an authority laying down proposition of law by this Court unless and until principle of law arise for consideration and the order lays down principle of law. A decision is an authority for what it actually decides. The essence of a decision is its ratio and not every observation found therein nor what legally follows from the observations made in the order. A case cannot be an authority on the point of a fact. Each case has to

be decided in the light of circumstances existing in it. A precedent is a judicial decision which lays down a principle of law. Generally bail orders in their operative part proceed on peculiar facts of each case. Sometimes facts are not stated in the order considering complexity of facts and circumstances of the case. Therefore, generally bail orders without laying down principle of law cannot be regarded as an authority on a point of fact. Therefore, in my opinion, both the judgments cited by the advocate for the applicant in the absence of proposition of law being decided cannot be treated as a precedent laying down principle of law. The order relied upon by the applicant, therefore, is of no help to the applicant.

11. Therefore, in my opinion, the applicant does not deserve to be released on bail. The application, therefore, stands rejected.

(AMIT BORKAR, J.)