

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.266 OF 2023

Siddharth Devrao Damodar and another Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri K.H. Anandani and Shri B.K. Suchak, Advocates for
applicants.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 21, 2023.

This is an application under Section 439 of the Code of Criminal, 1973. The applicants have been arrested on 13.12.2021 in Crime No.736/2021, registered with Police Station, Khamgaon City, District Buldhana for the offence punishable under Section 379 of the Indian Penal Code.

2. Briefly stated accusation against the applicants is that they along with co-accused have stolen Hero Honda Spender motorcycle bearing MH28BJ0157. The informant is the owner of the motorcycle. He lodged report on 13.09.2021 that his cosine brother took his motorcycle to get some sweets. He parked the motorcycle near Agrasen Chowk, Khamgaon and proceeded to get sweets. The motorcycle was stolen from the said place.

3. According to the prosecution, on 13.12.2021, the Police Sub Inspector, Sagar Ashokrao Hatwar received

reliable information that three persons namely Akash Dharpawar, Sidharth Damodar (applicant no.1), Vikki Wankhade (applicant no.2) are the persons who are involved in motorcycle theft. They steal new motorcycles from some place, used the same and then sell it off. The informant further received information that these three persons have left Telhara City for Akola.

4. Accordingly, a trap was led. The witness found three persons were coming on black colour Honda Shine motorcycle. Witness stopped them and inquired, to which the accused persons gave evasive answers. In interrogation they disclosed that they had stolen 12 motorcycles from different places viz. Amravati, Akola, Buldana etc. They have sold those vehicles. The person who has purchased stolen motorcycle was called to the Police Station with the motorcycle. One such purchaser brought the Hero Splender motorcycle, which is the subject matter of the present FIR. This motorcycle was produced by Vaibhav Rameshwar Dambale. Upon verification of engine and chassis number, it was identified that the said motorcycle is the one which has been stolen. Accordingly, the motorcycle came to be seized.

5. Learned counsel for the applicants submits that firstly, the applicants were not the rider of the Honda Shine motorcycle but were pillion rider. Secondly, it is nobody's case that the Honda Shine motorcycle was subject matter of present FIR. Thirdly, the motorcycle has been produced by

Vaibhav Rameshwar Dambale. He has been made accused. There is no connection between applicant and Viabhav. Thus, according to him, there is absolutely no evidence against the applicants.

6. As against, the learned APP submits that during the interrogation the role of all the accused is disclosed. They are habitual offenders. They have stolen 12 motorcycles and they have sold the same to different persons. The applicants have criminal antecedents and accordingly prayed for dismissal of the application.

7. Having given thoughtful consideration to the submissions made by the both side, there appears substance in the submission made by the learned counsel for the applicants. The stolen motorcycle has been produced by Vaibhav Rameshwar Dambale. The investigating officer ought to have collected evidence as to from where he has procured the vehicle. In absence of same, it is difficult to jump to the conclusion that the applicants have stolen the vehicle and have sold it to Vaibhav. In the circumstances, merely because the applicants have criminal antecedents, the benefits cannot be refused, particularly, when the applicants are behind bar for last one year and four months, when the maximum punishment for the offence under question is three years.

8. The charge-sheet has been filed. The charge is not yet

framed. It will take time to commence and conclude the trial.

9. In view of above and considering the nature of evidence and further considering the fact that the applicants are behind bar for one year and four months coupled with presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

10. The observations made in this order are prima facie and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Applicant – (1) Siddharth Devrao Damodar and (2) Vikky Gajanan Wankhade, be released on bail in Crime No.736/2021, registered with Police Station, Khamgaon City, District Buldhana for the offence punishable under Section 379 of the Indian Penal Code, on they executing P.R. Bond in the sum of ₹25,000/- each

with one surety in the like amount.

(iii) The applicants shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicants 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/her from disclosing such facts to the Court or any Police Officer.

(v) The applicants shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offence. The applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicants shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

Wagh