

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

...
CRIMINAL APPLICATION (BA) NO. 369/2023

Aakash Vithhal Vibhute

.. Applicant

versus

The State of Maharashtra

Th: Its PSO City Tq. Washim Dist. Washim.

.. Respondent

.....
Mr.V.J. Gawali, Advocate for the applicant

Mr.M.J.Khan, APP for Respondent-State
.....

CORAM: ANIL L. PANSARE, J.

DATED : 2nd May, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 13.03.2023 in Crime No.49/2023 registered with Police Station, City Tq. Washim, Dist.Washim, for the offences punishable under Sections 392, 395, 201 read with Section 34 of the Indian Penal Code.

2. Initially, the FIR was registered under Sections 392 and 34 of the IPC. Later on, the offence under section 395 came to be added. The FIR indicates that the informant runs a Pathology Laboratory. He received an amount of Rs.9,50,000/- from private monthly investment scheme (*Bhishi*). Out of the said amount, he has paid Rs.3,00,000/- for purchasing the plot. He kept Rs.6,50,000/- in his Laboratory. His employees were aware of the said fact. In the intervening night of 26.01.2023 and 27.01.2023, three unknown person have, at the point of knife, stolen amount of Rs. 6,50,000/-. Informant's employee-Satish was on night duty. Three unknown persons trespassed and at the point of

knife, had stolen the amount. At that time, one Yogesh Mapari was also present in the Laboratory. Satish informed the incident to the informant at 02.00 am. The informant rushed to the Laboratory. Satish and Yogesh informed about the incident. The informant along with these two approached the Police Station and lodged the report.

3. The learned APP submits that the applicant was present along with other accused while committing the crime. He has entered into the Laboratory along with other accused, but by concealing his face with jacket. The whole incident has been captured in CCTV camera. The jacket by which the applicant's face was wrapped has been seized from his house. At the relevant time the applicant was wearing a bracelet ('kada'), which is also seized.

4. The learned counsel for the applicant, however, has rightly pointed out that the test identification parade has not been conducted and that no one has identified the applicant, to be the person who had entered the Laboratory. On the point of jacket, he submits that similar such jackets are available in the open market, so also the bracelet.

5. Thus, to my mind, it appears a little challenging for the prosecution to connect the applicant with the crime in question.

6. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long.

7. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the 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.

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

9. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Aakash Vithhal Vibhute, be released on bail in Crime No.49/2023 registered with Police Station, City Tq.Washim, Dist. Washim, for the offences punishable under Sections 392, 395, 201 read with Section 34 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- (iii) The applicant 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 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/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall cooperate in the investigation and shall attend the concerned Police Station on first Sunday of every month, till filing of the charge-sheet and after filing of the charge-sheet he shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offence. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant 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.]

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