

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

...

CRIMINAL APPLICATION (BA) NO. 1327/2022

Shreyash s/o Raju Vijaykar

.. Applicant

versus

The State of Maharashtra
Th: PSO, I/c PS Pachpaoli
Dist. Nagpur.

.. Non-applicant

.....
Mr. A.S.Tiwari, Advocate for the applicant
Mr.N.R.Rode, APP for non-applicant
.....

CORAM: ANIL L.PANSARE,J.

DATED : 9th January, 2023

PC:

Heard.

2. The applicant has been arrested in connection with Crime No. 515/2022 for the offences punishable under Sections 394, 397, 120-B and 34 of the Indian Penal Code; Sections 4 and 25 of the Indian Arms Act and Section 135 of the Bombay Police Act, registered at Police Station Panchpaoli, Nagpur. The applicant has been arrested on 17th April, 2022 and since then he is languishing in jail.

3. The prosecution case is that on 16th April, 2022 at about 15:50 to 16:00 hours, three unknown persons snatched gold ornaments weighing about 400-500 grams and silver bricks. The informant's moped was also snatched. Later on, the father of informant-Ketan Kamdar stated that he was carrying 5100 gms. of gold, 2500 gms. of silver bricks, cash of Rs. 2 lakhs, one mobile and one two wheeler.

4. During investigation, it transpired that as many as seven persons have participated in the said crime. The present applicant was working in the shop, named and styled as 'Gurudev Jewellers. Ketan Kamdar (informant's father) used to visit the said shop frequently to supply and display gold and silver jewellery. Ketan Kamdar was/is a goldsmith and used to supply jewellery to the retailers. Thus, the applicant was well aware of the movements of the Ketan Kamdar. The role assigned to the applicant is that he has given tip to the co-accused who have executed the plan and have stolen the articles.

5. The learned Additional Sessions Judge-16, Nagpur has rejected the application for bail on the ground that the applicant has played a vital role and that because of his tip, the co-accused had committed the crime.

6. The applicant is 20-years-old. There are no criminal antecedents against him and as regards the role played by him, except for statement of the co-accused, there is no other evidence to implicate him in the said crime.

7. The learned APP has made an attempt to show complicity of the applicant in the crime by referring to CCTV footage of the vicinity. It appears from the CCTV footage that at the relevant point of time, the applicant was talking on his mobile phone. This evidence by itself cannot establish that the applicant has given the tip. Learned APP has then invited my attention to the statement made by the owner of the Gurudev Jewellers. He has stated that Ketan Kamdar used to visit his shop once

or twice a month. He states that said Ketan is a wholesale supplier of gold and silver. He states that on the date of the incident, Ketan Kamdar came to his shop. At that time, the applicant went out of the shop and was talking with someone on phone and his body language was not regular. He was time and again looking towards Ketan Kamdar. At about 3.50 p.m. when Ketan left the shop, the applicant went outside and had called someone.

8. Learned Advocate for the applicant submits that the applicant had made a call to accused no.4 who happens to be real brother of the applicant. The learned Advocate further submits that this was a routine call as in lunch time both brothers take lunch together. Thus, it appears on the strength of submissions made by learned Advocate for the applicant that the call upon which the prosecution is relying, is merely a routine call to his brother to meet in lunch-time. Even otherwise, the said call by itself cannot be said to be a tip particularly when the accused no.4 who is the brother of the applicant, was not found at the spot of the crime.

9. The learned Advocate for the applicant submits that the applicant is the permanent resident of Panchpaoli Nagpur where he resides along with his widowed mother and the house is owned by them. Thus he has a strong roots in the locality. *Prima facie*, the evidence against the applicant is weak. The applicant is only 20 years old and is in jail since April 2022 and the trial will take its own time. There are no criminal antecedents against the applicant.

10. In these circumstances, the applicant has made out a case

for grant of bail. Hence the order :-

ORDER:

- (i) The Criminal Bail Application is allowed.
- (ii) The applicant-Shreyash s/o Raju Vijaykar, shall be released on bail, on executing a PR bond in the sum of Rs.25,000/- (Rupees twenty five thousand), in respect of Crime No. 515/2022 for the offences punishable under Sections 394, 397, 120B read with section 34 of the IPC and Section 4 and 25 of the Arms Act and Section 135 of the Bombay Police Act registered at Police Station Panchpaoli Dist. Nagpur with one solvent surety in the like amount.
- (iii) The applicant shall attend the Police Station Panchpaoli, Nagpur as and when directed by the Investigating Officer.
- (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 not obstruct or tamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the Police.
- (vi) The applicant shall not leave the territory of Panchpaoli Police Station without prior permission of the Court, till the trial is over.
- (vii) The applicant shall maintain law and order.
- (viii) 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 residence till the final disposal of the case.
- (ix) The applicant shall regularly attend the court and cooperate the learned trial court to complete the trial for the above offences.

(x) 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 sides.

The Application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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