



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

**922 BAIL APPLICATION NO. 2287 OF 2023**

Vijay Jayshrya Kale.

**... Applicant**

**Versus**

The State of Maharashtra.

**... Respondent**

Mr. Anil M. Gaikwad, Advocate for Applicant.

Mr. Mukesh K. Goyanka, APP for Respondent/State.

CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 25<sup>th</sup> January, 2024.

**P.C.:**

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.), for grant of regular bail in connection with Crime No.83 of 2023, registered with Belwandi Police Station, District Ahmednagar, for the offences punishable under Sections 302, 394, 396, 120-B of the Indian Penal Code, 1860 (for short I.P.C.). The applicant and other accused are arrested in the said crime.

3 The informant averred in the report that on 13<sup>th</sup> March, 2023 at about 11:00 pm all the family members slept in the house and her husband slept in the tin-shed adjacent to the house on the cot. On 14<sup>th</sup> March, 2023 at about 12:30 am, the door of her house was

opened by someone by giving heavy impact over it. She saw four persons entered there in the house. Her husband awoke and made hue and cry. One person out of them, assaulted her husband by a cable wire; one person pressed her mouth and snatched golden ornaments on his person; one person out of them was searching out the articles / money in the house, one person out of them was demanding keys of cupboard and also asked them as to where the money is kept. They took out 4 to 5 grams golden ornaments forcefully and that the theft of Rs.15,000/- was committed by the four persons. Lastly the applicant assaulted on the head of her husband with hard and blunt object. The neighbourers were gathered because of their hue and cry. The husband of the informant was taken to Anandvan Hospital at Dhawalgaon. The doctor examined him and declared that he is already dead. The report was lodged on the same day.

4           The learned counsel for applicant submitted that this applicant is not identified in the test identification parade by the informant and the alleged eye-witnesses of the incident. He further pointed out the statements of witness Ganesh Dabhade and Samir Wagh that they have not seen occurrence of the alleged incident, but only heard about the planning of the dacoity earlier to the incident. He further submitted that the applicant is innocent. He has roots in the society. He will not flee away from the trial. The applicant will not involve himself in such nature of crime in future. It is lastly prayed to allow the application.

5           The learned APP for the State strongly opposed the application. It is submitted that the applicant and other accused have criminal antecedents. They are prosecuted in similar type of crimes. The MCOC Act is likely to be invoked against the applicant and other accused. The evidence of witness Samir Wagh shows that the applicant and other accused went to his shop alongwith golden ornaments and he refused to purchase those ornaments as they were not having receipt with them. The learned APP further pointed out the statement of Ganesh Dabhade, who heard hatching of the conspiracy for commission of theft some time before the incident and also after the incident the applicant and other accused discussed about that dacoity and also about articles, particularly, golden ornaments, which are incriminating articles. There was discussion about the incident that one of the co-accused would not have seriously assaulted the husband of the informant. He was questioned as to why he was assaulted seriously etc. The learned APP submitted that possibility of commission of similar nature of serious crime by this applicant and other co-accused cannot be ruled out. The learned APP further pointed out that Crime No.86 of 2023 is also registered against this applicant, which was committed on the very next day of the incident in the case in hand. It is lastly prayed to reject the application.

6           Perused the charge-sheet and the report. The statements of two witnesses discussed above show that the applicant was

involved in this crime and he had played prominent role in the crime. The evidence of witness Ganesh Dabhade though recorded on 31<sup>st</sup> March, 2023, it is perceived and *prima-facie* evidence against the applicant. It is natural evidence of earlier and subsequent conduct of the applicant and other accused that they planned to commit dacoity and also planned as to how such offences shall be committed in future without committing murder by latching the doors of peoples residing in such vicinity who may not come to rescue. The statement of Samir Wagh also shows subsequent conduct of the applicant and other accused that they went to his shop for selling the golden ornaments as he is a goldsmith. Though there is no evidence of test identification parade identifying any of the accused as the incident took place in the night time, the evidence of these two witnesses is *prima-facie* material evidence against the applicant about their subsequent conduct. The applicant has criminal antecedents and possibility of commission of similar nature of crime cannot be ruled out. For prevention of such nature of crime and also for securing his presence for the trial, the bail cannot be granted to the applicant. Considering the serious nature of the crime, the application deserves to be rejected. It is rejected.

**[ SANJAY A. DESHMUKH, J. ]**