



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 BAIL APPLICATION NO. 2304 OF 2023

Anil Subhash Wani

VERSUS

The State Of Maharashtra

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Advocate for Applicant : Mr. Wakale Vijay Shivaji

APP for Respondent : Mr. N.S. Tekale

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 12, 2024

PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.255 of 2023 registered with Pishor police station, District Aurangabad for the offences punishable under sections 395, 457, 506, 34 of the Indian Penal Code.

2. Investigation was set in motion on the basis of the information given by one Sunita Sagar, alleging that on 8.8.2023 she was at home alongwith her mother Devubai, brother Sandip and sister-in-law Vaishali etc. After having dinner, her brother and sister-in-law went to sleep in the Cow shade , while mother, her niece Savita, nephew Kartik and herself slept in the house. In the night at about 1.30 to 2.00 am, four unknown persons entered in the house. Their faces were masked all of them were wearing black T-shirt and black pant. They were holding deadly weapons. They threatened informant's mother and others, took away cash of Rs.20,000/-

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and snatched golden ornaments from person of informant and her mother. While leaving the house, face mask of one of the accused was escaped therefore informant could see his face. Thereafter, accused persons locked door from outside and flee away. On the basis of such information, crime no.255 of 2023 came to be registered against unknown culprits.

3. During course of the investigation, accused persons were arrested. Incriminating articles are seized and finally charge-sheet came to be filed for the offenses punishable under sections 395, 457, 506 of the IPC.

4. Mr. Wakle, learned advocate appearing for the applicant would submit that applicant has been falsely implicated in the aforesaid crime. FIR itself indicates that accused persons had masked their faces. There is no recovery of incriminating article from the applicant/accused. He has been implicated on the basis of statement of co-accused Sunil Janardhan Paithane. Investigation in the matter is complete. Charge-sheet is filed. Further detention of the applicant may not be necessary.

4. Learned A.P.P. strongly opposes the prayer for grant of bail. He would point out that there is recovery of incriminating article from accused Sunil Paithane, who disclosed the applicant to be accomplice in subject crime. Further, on arrest of the applicant, he was subjected to identification parade. Informant identified him. Recovery of a mobile phone instrument is made from the applicant/accused.

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CDR record of accused Sunil Paithane indicates his connection with the applicant on the day of incident. As such, there is sufficient material to bring home the guilt against the applicant.

5. Having considered the submissions advanced, it is apparent that FIR was registered against unknown culprits. Statement of police inspector Bhagwantsing Ganpat Dulat shows that on the basis of secret information and on technical evaluation of the evidence, involvement of accused Sunil Paithane was surfaced. On his arrest, he admitted commission of offence and named his companions. Accordingly, applicant has been arrested in the aforesaid crime. After completion of the investigation, charge-sheet has been filed. The contents of charge-sheet shows that except recovery of mobile phone, no incriminating article is recovered from the applicant. Recovery of the ornaments etc. is made from the accused Sunil Janardhan Paithane.

6. Although, there is evidence in the nature of identification parade and the applicant is shown to have been identified by the first informant, prima facie, such identification cannot be given much importance at this stage since as per the FIR, culprits had covered their faces by mask and face of only one accused was seen by the informant. Identification parade shows that she identified as many as six accused persons, which is apparently improbable. Secondly, FIR depicts that only four accused persons were involved in the

robbery. However, as many as six persons have been charge-sheeted. Material in the charge-sheet is inconsistent with the narration in the FIR. Only because CDR record indicates communication between the applicant and co-accused Sunil, his complicity in offence cannot be presumed. The applicant is behind the bar since 21.8.2023 i.e. almost for five months. Investigation in the matter is complete and charge-sheet is filed. Considering nature of evidence against the applicant, further detention of the applicant need not be continued. Hence, case is made out for grant of bail subject to certain conditions. Hence, the order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant - Anil Subhash Wani be released on bail in connection with Crime No.255 of 2023 registered with Pishor police station, District Aurangabad for the offences punishable under sections 395, 457, 506 r/w 34 of the Indian Penal Code on his furnishing PB. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective date before the trial court.
 - c] The applicant shall not indulge in similar offence.

- iii. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR)
JUDGE

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