

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2844 OF 2023

Sagar Atmaram Gosavi	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2666 OF 2023

Kishor <i>alias</i> Darshan	
Raju Dharwad & Ors.	...Applicants
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Chetan G. Patil, Advocate for Applicant in BA No.2666 of 2023.
Mr. Bhooshan R. Mandlik, Advocate for the Applicant in B.A. No. 2844 of 2023.
Ms. S. S. Kaushik, APP for Respondent- State.
P.S.I., Mr. Sanjay N. Patil, Ajara Police Station, Kolhapur, present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 12th February 2024

P. C.

1. Heard Mr. Mandlik, learned Counsel appearing for the Applicant in Bail Application No.2844 of 2023, Mr. Chetan Patil, learned Counsel appearing for the Applicant in Bail Application No.2666 of 2023 and Ms. Kaushik, learned APP appearing for the Respondent-State.
2. These regular Bail Applications are preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1.	C. R. No.	55 of 2023
2.	Date of registration of F.I.R.	12th April 2023
3.	Name of Police Station	Ajara Police Station, Kolhapur
4.	Section/s invoked	395, 397, 452, 324, 427, 506 and 120(B) of the <i>Indian Penal Code, 1860</i> .
5.	Date of incident	12th April 2023
6.	Date of arrest	14th April 2023
7.	Date of filing of Charge-sheet	10th July 2023

3. As per the prosecution case, there are about 18 accused and they committed dacoity in the house of the informant and have stolen cashews, pigs and some gold and silver ornaments.

4. Mr. Bhooshan Mandlik and Mr. Chetan Patil, learned Counsel appearing for the respective Applicants submitted that the Accused were arrested in the month of April 2023. Charge-sheet has been filed on 10th July 2023. Both of them submitted that the trial will take a long time to conclude. Both of them submitted that there are a total of 18 accused persons out of which 3 are absconding, 15 were arrested and 11 were granted bail by the learned Additional Sessions Judge, Gadhinglaj by Order dated 31st July 2023 passed in Bail Application No.75 of 2023 and Bail Application No.77 of 2023. They submitted that the role of the other accused is the same and therefore parity is applicable. The Applicants are the sole earning members of their respective families. There are no antecedents. Some of the

Applicants are in the business of pig-farming and they have pig farm and therefore recovery of pigs has no relevance. They also submitted that the recovery of gold and cashew also has no relevance.

5. On the other hand, Ms. Kaushik, learned APP strongly opposed the Bail Applications. She submitted that except for one Applicant i.e. Accused No.3 - Kishor *alias* Darshan Raju Dharwad, others have been identified. She submitted that there is a recovery at the instance of all the Accused. She however submitted that there are no antecedents. Ms. Kaushik, learned APP submitted that the seriousness of the offence and the manner in which the offence has been committed is a relevant factor and the Bail Application be rejected.

6. Learned Counsel appearing for the Applicants have submitted that there is complete parity as far as the other Accused are concerned. To demonstrate the same, they relied on paragraph nos.8 and 9 of the Order dated 31st July 2023 passed by the learned Additional Sessions Judge, Gadhinglaj in Bail Application Nos.75 of 2023 and 77 of 2023. The said paragraphs read as under:

"8. On perusal of Test Identification Parade, it finds that, it was conducted for all the accused on the same day. In said Test Identification Parade, the witnesses identified some applications. But the prosecution depend not only on the Test Identification Parade but recovery of stolen articles. Stolen articles and weapon was recovered from some applicants. After considering the Test Identification Parade, it finds that, witnesses identified Ashok Bhangi,

Ganesh Shipari, Ravi Kunchikorvar, Hanmanta Nashik, Akshay Pujari, Divesh @ Ashok Dodmani, Suraj Kadolkar, Fakirappa Telekoti, Shrikant Sigali, Durgappa Kalyani and Sagar Gosavi. As per the police papers, it is clear that, police recovered 10 Kg. Cashew from the house of Kishor @ Darshan Dharwad, some gold and silver ornaments from Ganesh Shipari and Sagar Gosavi and knife was recovered from Akshay Pujari.

9. *After considering Test Identification Parade, it finds that the police used same dummy persons for Test Identification Parade. Therefore, only on the basis of the Test Identification Parade, application is not liable to be dismissed. But after considering the recovery of gold and silver ornaments, cashew and knife and there is strong evidence found against applicants Kishor @ Darshan Dharwad, Ganesh Shipari, Akshay Pujari and Sagar Gosavi. The prosecution totally depends on the deposition of panch and recovery panchanama. If these applicants are released on bail, there are chances that they would put pressure on the witnesses, who worked as a panch on recovery panchanama. Therefore, these four applicants are not entitled to get bail. So far as other applicants are concerned, they are entitled to be released on bail on certain conditions."*

Thus, it is clear that with respect to important aspects, the parity is applicable. The Accused, who have been identified in the test identification parade have also been granted bail by the learned Trial Court. As far as the aspect of recovery is concerned, the only distinguishing factor is that there is recovery at the instance of the present Applicants. However, recovery is of pigs, cashews, gold and silver ornaments and knife. However, the F.I.R. mentions the weapon

as a sword. Some of the Applicants are in the business of pig-farming and *prima-facie* recovery of pigs is also not relevant.

7. It is an admitted position that investigation has been completed and that Charge-sheet has been filed on 10th July 2023. There are 37 witnesses as per the Charge-sheet. The trial is likely to take a considerably long time.

8. Learned Counsel appearing for the respective Applicants states that as several witnesses are residing in the same locality as that of the Applicants, the Applicants will therefore not enter the jurisdiction of Ajara Police Station, Kolhapur.

9. The Applicants do not have any criminal antecedents.

10. The Applicants do not appear to be at risk of flight.

11. Accordingly, the Applicants can be enlarged on bail by imposing conditions.

12. In view thereof, the following order:-

ORDER

(a) The Applicant-Sagar Atmaram Gosavi in Bail Application No.2844 of 2023 and the **Applicant No.1-Kishor *alias* Darshan Raju Dharwad, Applicant No.2-Ganesh Dargappa Shipari and Applicant No.3-Akshay Saidappa Pujari** in Bail Application No.2666 of 2023 be released on bail in connection with C.R. No.55 of 2023 registered with the Ajara Police Station, District- Kolhapur on their furnishing

PR. Bonds of Rs.25,000/- **each** with one or two local solvent sureties each in the like amount.

(b) The Applicants shall not enter Taluka Ajara, District-Kolhapur after being released on bail, except for reporting to the Investigating Officer, if called.

(c) On being released on bail, the Applicants shall furnish their cell phone numbers and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(d) The Applicant- Sagar Atmaram Gosavi (in B.A. No. 2844 of 2023) shall report to the Karveer Police Station, District Kolhapur once every week on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Karveer Police Station, District-Kolhapur to communicate details thereof to the Investigating Officer.

(e) The Applicants- Kishor alias Darshan Raju Dharwad, Ganesh Dargappa Shipari and Akshay Saidappa Pujari (in B.A. No. 2666 of 2023) shall report to the Gadhinglaj Police Station, District Kolhapur once every week on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Gadhinglaj Police Station, District-Kolhapur to communicate details thereof to the Investigating Officer.

(f) The Applicants shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(g) The Applicants shall not tamper with the evidence and shall not contact or influence the Complainant or any witnesses in any manner.

(h) The Applicants shall attend the trial regularly. The Applicants shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(i) The Applicants shall surrender their passports, if any, to the Investigating Officer.

13. The Bail Applications are disposed of accordingly.

14. It is clarified that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merits uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]

Note: This order is modified as per Speaking to the Minutes order dated 15th February 2024. The corrections are shown in bold in clause (a) of paragraph No.12.