

Santosh

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

BAIL APPLICATION NO. 1685 OF 2024

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.04.24
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Abhay Liladhar Gautam

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Vaibhav Kadam, a/w Shrinath Badale, for the Applicant.
Ms. Supriya Kak, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 19th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for bail in connection with C.R. No.310 of 2023 registered with Nagpada Police Station for the offences punishable under Sections 170, 341, 347, 363, and 395 of the Indian Penal Code.
3. At the outset, the learned Counsel for the Applicant submits that the principal accused Kailash Suryawanshi has been released on bail and by orders dated 10 April 2024 and 19th April, 2024, this Court has granted bail to co-accused Shadab Hussain Shaikh and Mohd. Hussain Firoz Ahmed Ansari. The role attributed to the applicant is relatively minor.

Nothing has been recovered at the instance of the applicant. The only material against the applicant is the identification of the applicant in the Test Identification Parade, which was conducted after two months of the alleged occurrence.

4. The learned APP resisted the prayer for bail. Attention of the Court was invited to the disclosure statement of Kailash Suryawanshi, wherein the applicant has been named as one of the robbers.

5. While releasing the co-accused Shadab Hussain Shaikh this Court has, inter alia, observed as under :

“7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Evidently, the victim was abducted by unknown persons. The victim states that few of the persons, who had abducted him were wearing face masks. The incident does not seem to have lasted for a long time. Though in the FIR, the victim has described the features of the persons, who had allegedly abducted him, yet the memorandum of test identification parade does not indicate that the applicant was identified with reference to those features, nor does the supplementary statement of the victim after the test identification parade seem to have been recorded.

8. In the backdrop of the nature of the accusation, the fate of the prosecution case would hinge on the identity of the applicant as one of the robbers. The recovery of a sum of Rs.1,75,000/-, in the context of the allegations that the victim was robbed of Rs.25,00,000/-, does not seem to have such incriminating tendency as to sustain the weight of the accusation. The identity of the applicant as one of the robbers would be a matter for adjudication at the trial. I am, therefore, persuaded to allow the application.”

6. In the case at hand, apart from the identification of the applicant in the Test Identification Parade, no other

circumstance is pressed into service against the applicant. In this view of the matter, the applicant is entitled to the same dispensation as is extended to the co-accused, who have been released on bail. I am, therefore, inclined to allow the application.

7. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Abhay Liladhar Gautam be released on bail in C.R. No.310 of 2023 registered with Nagpada Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence before Nagpada Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant 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 him from disclosing the facts to Court or any police

officer.

- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]