

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2593 OF 2023

Rahul Babu Bhoir

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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by VISHAL
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Date: 2024.02.08
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Mr. Sanjay Jadhav a/w. Mr. Swapnil Gangurde, Ms. Sulochana Sahu,
for the Applicant.

Mr. M.G. Patil, APP, for the Respondent/State.

Mr. B.S. Nikumbh, PSI, Wagle Estate police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 5, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. The applicant, who is arraigned in C.R. No. 264 of 2022
registered with Wagle Estate police station for the offences
punishable under sections 395, 392, 420, 323 and 171 read with 34
of Indian Penal Code, 1860, seeks to be enlarged on bail.

3. The first informant became acquainted with a person who
identified himself as Amit Mishra. The said person induced him to
advance money to the former. On 11th November, 2022 the first
informant and his friend Mangesh had gone to deliver the amount
to said Amit Mishra. While they were on their way to the place
where Amit Mishra was stated to be present, six persons came
thereat in an Ertiga car bearing No. MH-43-BP-2189. They

represented themselves as police personnel. They were having fiber sticks. Those persons robbed the driver of the first informant of the bag containing cash amount of Rs. 5 lakhs. They allegedly assaulted the first informant, his driver and Mangesh by means of sticks.

4. Mr. Jadhav, the learned counsel for the applicant, submitted that the applicant has been in custody since 8th December, 2022. The applicant was not named in the FIR. There is no material to connect the applicant with the alleged offence.

5. The learned APP resisted the prayer for bail. It was submitted that pursuant to the discovery made by the applicant, a part of the amount which was robbed of by the applicant and the co-accused, has been recovered. The applicant has also been identified by the first informant and witness Mangesh in the course of Test Identification parade. It was further submitted that there are antecedents of the applicant. The applicant has been arraigned in C.R. No. 159 of 2022 registered with Chitalsar police station for the offences punishable under sections 420 and 170 read with 34 of Penal Code and in C.R. No. 196 of 2022 registered with Wagle Estate police station for the offences punishable under sections 120-B, 392, 420 read with 34 of the Penal Code.

6. Prima facie, it appears that the alleged robbery was committed by persons whom the first informant and the witness

Mangesh had not known from before. In the FIR, the first informant has furnished the features of the alleged robbers. Having regard to the nature of the occurrence, it is debatable whether there was adequate opportunity for the first informant and the witness Mangesh to minutely note the features of the persons who allegedly robbed them of and fled away in the car.

7. The discovery under section 27 of the Evidence Act prima facie appears to be fraught with infirmities as a joint disclosure statement appears to have been made by three accused namely the applicant, Vishnu Kale and Suresh Dalvi.

8. In the circumstances of the case, the case of the prosecution hinges upon the evidence of identification of the applicant as one of the robbers.

9. The applicant is in custody since 8th December, 2022. It is unlikely that the trial can be concluded within a reasonable period. Thus, I am inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application is allowed.

2] The applicant be released on bail in C.R. No. 264 of 2022 registered with Wagle Estate police station, on furnishing a

P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Wagle Estate police station on the first Monday of every month between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)