

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

BAIL APPLICATION NO. 3244 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Haresh Kumar Goswami	Versus	...Applicant
State of Maharashtra		...Respondent

Mr. Amandeep Singh Bolhe, for the Applicant.
Mr. Bapu Vitthalrao Holambe Patil, APP for the State/
Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 22nd FEBRUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in connection with CR No.31 of 2018, registered with Mahatma Phule Chowk Police Station, Kalyan, for the offences punishable under Sections 397, 394, 341 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 37(1) read with Section 135 of the Maharashtra Police Act, 1951.
3. The first informant lodged a report to the effect that on 17th January, 2018 at about 10.30 pm. while he was passing towards Waladhuni from Kolsewadi, two unknown persons, who were riding Pulsar motorcycle, chased him. The pillion rider tried to snatch the gold chain, the first informant was wearing.

They made him to halt the motorcycle. One of them pointed a knife and robbed the first informant of cash amount of Rs.6,49,000/- and Jupiter motorcycle.

4. The applicant came to be arrested pursuant to an intimation by Crime Branch-3, Kalyan to the effect that the applicant was involved in CR No.31 of 2018 registered with Mahatma Phule Chowk Police Station, Kalyan.

5. The learned Counsel for the applicant submitted that the applicant is in custody since 21st November, 2018. There is no material to connect the applicant with the alleged offences.

6. The learned APP countered the submission on behalf of the applicant. It was submitted that the applicant is a habitual offender. Apart from the instant offence, four crimes of similar nature have been registered against the applicant. Therefore, the applicant does not deserve to be released on bail.

7. I have perused the FIR and material on record. The memorandum of Test Identification Parade indicates that co-accused Aliajgar Alihasan Momin was allegedly identified by the witnesses. Even if it is assumed that the applicant was also identified in the Test Identification Parade, yet the fact that the said Test Identification Parade was conducted after about 11

months of the alleged occurrence cannot be lost sight of. Moreover, the first informant alleged that all the three robbers were wearing mask. In such circumstances, *prima facie*, whether the first informant had adequate opportunity to see the features of the robbers so as to identify them at a later point of time would be debatable.

8. In any event, the applicant has been in custody since 21st November, 2018. More than five years have elapsed. It is unlikely that the trial can be concluded within a reasonable period. Thus, further detention of the applicant seems to be unwarranted.

9. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

10. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.31 of 2018, registered with Mahatma Phule Chowk Police Station, Kalyan, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or more sureties in the like amount.
- (iii) The applicant shall mark his presence at Mahatma Phule

Chowk Police Station, Kalyan, on the first Monday of every alternate month in between 10.00 am. to 12.00 noon till conclusion of the trial.

(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 stands disposed.

[N. J. JAMADAR, J.]