

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

BAIL APPLICATION NO. 3825 OF 2023

Kiran Shivaji Gaikwad

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Piyush Toshniwal i/by Mr. Ashish P. Pawar	Advocate for the Applicant
Mr. V. N. Sagare	APP for the Respondent
Mr. Satish G. Jadhav	PSI, Karad Taluka Police Station

CORAM : S. M. MODAK, J.

DATE : 22nd APRIL 2024

P. C. :-

1. Heard learned Advocate for the Applicant-accused No. 1 and learned APP.
2. It is true that the Bail Application No. 552 of 2022 is filed by this Applicant was rejected on merits on 30/11/2022 (Coram : Anuja Prabhudessai J.). It is also true that subsequent Bail Application No. 2495 of 2023 was withdrawn on 27/10/2023.
3. Whereas this Court has granted bail to co-accused by way of

following orders:-

Co- Accused	Bail Application Number	Vide Order dated
Dattatray Madhukar Jadhav	Bail Application No. 2404 of 2019	25/02/2020
Shravan Kumar Brignandan (Brijnandan) Prasad Yadav	Bail Application No. 722 of 2020	04/09/2020
Vickyraj Sanjay Choudhari	Bail Application No. 42 of 20201	30/03/2021
Abhishekkumar Ranjit Singh	Bail Application No. 2759 of 2023	27/09/2023
Balaji Ramesh Gaikwad	Bail Application No. 3437 of 2023	04/11/2023

4. In view of the fact that bail is granted to co-accused after rejection of the first bail application of this Applicant, fresh bail application is filed on the ground of change in the circumstances. About orders, no one can dispute. However, mere grant of the bail subsequently, is not sufficient. Court has to see the role of those accused and present accused.

5. Learned Advocate Shri Toshniwal tried his best to point out how role is different and even he has placed on record the chart. It is marked as 'Annexure-X'. It is true that there is dacoity committed in the Bank

of the Maharashtra Shenoli branch, Tal. Karad on 11/03/2019. Five unknown persons have entered the bank and looted the cash and golden ornaments, mobiles in all amounting to Rs. 32,26,675/-.

6. It is true that during the parade, the present Applicant is identified alongwith few other accused persons. One of such statement is of witness Shivram Waghmare, on page no. 129. Apart from that at the instance of this Applicant firearms and live rounds are recovered at one place and cash, ornaments are at other place. It is on page no. 84 and 85.

7. It is true that as per the chart, there is recovery of cash from Shravan Yadav and Abhishekkumar Singh. It is also true that there is recovery of the empty magazines and live rounds from Vickyraj Choudhari. So one can say that that part of the materials is common in between them and the present Applicant. But what I find the differentiating factor is golden ornaments are recovered at his instance. It is not the case for other accused, who were granted bail.

8. Learned Advocate Mr. Toshniwal pointed out to me the memorandum of identifying the seized ornaments. According to him all are not identified but still few of them are identified.

9. Another circumstance which compels me not to grant bail is stage of the trial. The accused who were granted bail are not appearing before the trial Court and they are two in numbers and non-bailable warrant is issued to them. It is also true that this Court has granted bail to co-accused-Abhishekkumar and one of the consideration is long incarceration.

10. It is true that present Applicant is behind bar since 15/03/2019. There is maximum punishment of life for the offence punishable under Section 395 of the Indian Penal Code. So I do not think that on merits the role of this Applicant is similar to other accused.

11. Considering the non appearance of co-accused, I am not inclined to grant the bail to present Applicant. However, it is also true that accused is having right to speedy trial. So at most, he can be granted liberty to apply a fresh, if trial will not proceed within six months from today. Hence following Order:-

ORDER

(i) Copy of this Order be informed to the trial Court.

(ii) Even learned APP can give instructions to place a copy of this

Order before the trial Court.

(iii) If warrants are issued, let the Police to take an appropriate steps for execution of the warrant.

(iv) Even learned Judge is at liberty to proceed against the accused who are appearing if the trial Court finds that the warrant is not executed within the reasonable period.

12. Bail application is disposed of accordingly.

[S. M. MODAK, J.]