

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4170 OF 2023

Durgesh Jaiswal

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

Mr. Ajay Talreja, for Applicant.

Ms. Ranjana D. Humane, APP for State/Respondent

Mr. N. R. Tadavi, Crime Branch, Thane, Unit 2, Bhiwandi.

Digitally signed
by SAYALI
DEEPAK
UPASANI
Date: 2024.04.17
11:10:47 +0530

CORAM:- N. J. JAMADAR, J.

DATED:- 10th APRIL, 2024

PC:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) The applicant, who is arraigned in CR No. 226 of 2018, registered with Shanti Nagar Police Station, for the offences punishable under Sections 395, 342, 452 of the Indian Penal Code, 1860 and Section 135 read with Section 37 (1) of Maharashtra Police Act, 1951, has preferred this application through jail to enlarge him on bail.

3) The first informant resides at Bhiandi along with his wife and sons. On 2nd August, 2018 at 2.30 am, the first informant

woke up as he heard the cries of his son - Nilesh. When he opened the door of the house, he found that 4-5 persons wearing face masks and armed with knives and iron rods were with his son- Nilesh. One of them had pointed a knife on the neck of Nilesh. The robbers robbed the first informant of cash amount of Rs.50,000/- and a mobile phone handset. They divested his son and wife of their gold ornaments. Robbery of cash amount of Rs.8,75,000/- and gold jewelleryes aggregating to Rs.12,15,000/-, was committed.

4) The applicant and the co-accused came to be arrested. The applicant and the co-accused made discovery leading to the recovery of the cash amount of Rs.51,000/- and the mobile phone handset. In the test identification parade, the applicant was identified by the first informant.

5) The learned Counsel, who is appointed to espouse the cause of the applicant, submitted that the applicant has been arrested on the basis of suspicion. He has been in custody since 7th August, 2018. The rest of the co-accused have been released on bail. It is unlikely that the trial can be concluded within a reasonable period.

6) The learned APP resisted the prayer for bail. It was submitted that the applicant and the co-accused had committed

housebreaking by night armed with deadly weapons. The first informant and his son and wife were put in fear of instant death. It was further submitted that four other crimes have also been registered against the applicant. Therefore, the applicant does not deserve to be enlarged on bail. However, the learned APP, on instructions of the Investigating Officer, who is present in Court, fairly submitted that the co-accused have been released on bail.

7) The circumstances, which incriminate the applicant appear to be recovery of cash amount of Rs.51,000/- and the mobile phone handset of the first informant. Secondly, the applicant was allegedly identified in Test Identification Parade. At the same time, the Court cannot lose sight of the fact that the first informant and the witnesses stated that the robbers were wearing face masks. The question as to whether the first informant and the witnesses had ample opportunity to note the features of the robbers so as to identify them at a later point of time, may warrant consideration.

8) Since the co-accused have been released on bail and, prima facie, there does not seem much qualitative difference between the role attributed to the applicant and that of the co-accused, and the applicant has been in custody since more than

5 years and 8 months, further detention of the applicant appears unwarranted.

9) It is trite that a long period of incarceration as an undertrial prisoner impinges upon the right to speedy trial, which is a facet of the fundamental right guaranteed under Article 21 of the Constitution of India. I am, therefore, inclined to exercise discretion in favour of the applicant.

10) So far as the antecedents of the applicant, it prima facie appears after the applicant came to be arrested in this crime, he came to be arraigned in other crimes registered in the year 2018 itself, at various police stations. Therefore, the antecedents of the applicant do not constitute an impediment in releasing the applicant on bail.

11) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 226 of 2018, registered with Shanti Nagar Police Station, for the offences punishable under Sections 395, 342, 452 of the Indian Penal Code, 1860 and Section 135 read with Section 37 (1) of Maharashtra Police Act, 1951, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in

the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Shanti Nagar Police Station, on the first Monday of every alternate month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]