



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.647 OF 2023

(Kailash s/o Rajusing Thakur Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.G. Hunge, Advocate for the applicant.
Ms T. Udeshi, APP for the non-applicant/State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 10, 2024.

By this application, the applicant is seeking bail in connection with Crime No.515/2022 registered with Police Station, Pachpaoli, Nagpur, District Nagpur for the offences punishable under Sections 394, 120-B, 397 read with Section 34 of the Indian Penal Code and Section 4 and 25 of the Arms Act, 1959 and Section 135 of the Bombay Police Act, 1951.

2. The applicant is arrested on 18/04/2022 and since then he is behind bar.

3. Learned Counsel for the applicant submitted that as per the allegation in the FIR, on the basis of report lodged by Purvang Ketan Kamdar that at about 3.50 p.m. to 4.00 p.m., the father of the complainant namely Ketan Batukbhai Kamdar was proceeding from the panchpaoli flyover towards the Kamal square to Golibar square and was carrying the gold and silver ornaments weighing 400 to 500 grams and 3 kilograms silver ornaments. At the relevant time, unknown persons came in front of him and

tried to snatch the bag containing this ornaments. The complainant's father tried to rescue himself from the unknown persons but they have caused the injury to his father and snatched the bag and committed dacoity. On the basis of said report, police have registered the crime. During the investigation, the Investigating Officer has revealed the involvement of the present applicant in the alleged incident.

4. Learned Counsel for the applicant submitted that except the evidence of identification parade there is no other material to connect the present applicant with the alleged offence. Nothing is recovered from him. There is no criminal antecedent against him. Now, the investigation is completed and charge-sheet is filed. Except the statement of the co-accused, there is absolutely no material connecting the present applicant with the alleged offence. In view of that, the applicant be released on bail.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that the father of the complainant who is an old aged person was robbed by the present applicant and other co-accused. Present applicant has identified during the test identification parade. Though nothing is recovered from the present applicant but the involvement of the present applicant is revealed during the investigation, if he is released on bail he will tamper with the prosecution and prays for rejection of the application.

6. I have heard learned Counsel for the parties and perused the investigation papers. Admittedly, the FIR is lodged against the unknown persons. The only material as per the prosecution case against the present applicant is that he was identified during the identification parade and the statement of the co-accused. As far as the statement of the co-accused is concerned which is not admissible against the present applicant. The test identification parade is held on 08/06/2022 when the alleged incident has taken place on 16/04/2022 i.e. after two months.

7. The recitals of the test identification parade shows that he was identified by the witness. Admittedly, nothing is recovered from the present applicant. The test identification parade is not a substantial evidence. Now, the investigation is already completed. There are not criminal antecedent against the present applicant. Considering all these facts, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Kailash s/o Rajusing Thakur in connection with Crime No.515/2022 registered with Police Station, Pachpaoli, Nagpur, District Nagpur for the offences punishable under Sections 394, 120-B, 397 read with Section 34 of the Indian Penal Code and Section 4 and 25 of the Arms

Act, 1959 and Section 135 of the Bombay Police Act, 1951, be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and 1.00 p.m. till culmination of the trial.

(iv) The applicant shall also attend each and every date at the trial Court without seeking any exemption except in exceptional circumstances.

(v) The applicant shall furnish his cell phone number and address with the address proof.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)