

Prasad R. Rajput

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3180 of 2024

Akshaya Dattatraya Veikhande	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO. 4048 of 2024

Bashir Ibrahim Shaikh	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Mohammed Umar Kazi a/w Ms. Sonia Santis for Applicants.
 - Ms. Megha S. Bajoria, APP for State in BA No. 3180 of 2024.
 - Mr. Balraj B. Kulkarni, APP for State in BA No. 4048 of 2024.
 - Mr. Pankaj B. Patil, PSI, Shahapur Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 20, 2025

P. C.:

1. Heard Mr. Kazi, learned Advocate for Applicants; Ms. Bajoria, learned APP for State in BA No. 3180 of 2024 and Mr. Kulkarni, learned APP for State in BA No. 4048 of 2024.

2. Applicant- accused have filed Applications for regular bail under in connection with Crime No. 118 of 2024 registered with Shahapur Police Station under Sections 395, 365, 341, 419, 420, 170, 120-B of the Indian Penal Code, 1860.

3. Applicants before me are arrayed as Accused No.1 (Akshaya Dattatraya Veikhande) and 2 (Bashir Ibrahim Shaikh) in the above said crime.

4. Learned Advocate for Applicants and learned Prosecutors were fully heard on 06.01.2025 and following order came to be passed:-

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P.C.

1. I have heard Mr. Kazi, learned Advocate for the Applicants and Ms. Bajoria and Mr. Kulkarni, learned APPs for the Respondent – State.

2. The Applicant before me is arraigned as Accused No. 1 along with 11 other Accused in connection with C. R. No. 118 of 2024 registered with the Shahapur Police Station, Thane (Rural), for the offences punishable under Sections 395, 365, 341, 419, 420, 170 & 120B of the Indian Penal Code.

3. Briefly stated the case of the prosecution is that the Applicant along with other Accused was instrumental in committing dacoity on Mumbai-Agra High Way, wherein he was driver of one Innova car which intercepted a pick up van driven by the Complainant and robbed the Complainant of cash which was transferred from Jalgaon to Mumbai on 14.03.2024 at about 3.00 a. m. in the night. The prosecution has, thereafter, in its case stated that Accused No. 1 along with his other co-accused in the Innova car drove away to Mumbai-Agra High way where he was met by the other co-accused and there they all distributed the proceeds which were robbed from the pick up van of the Complainant amongst themselves. According to prosecution case, it is stated that Accused received a share out of the said booty of approximately Rs. 17,91,200/-. Memorandum panchanama has been drawn in this regard by the prosecution. According to the prosecution, out of this amount, Accused No. 1 – the Applicant before me deposited an amount of Rs. 3,40,000/- in his Bank account which is frozen and appropriated the as appearing in the prosecution' case/FIR.

4. Mr. Kazi, learned Advocate for the Applicants would, however, persuade me to see the contents of page No. 142 of the Application and would submit that in fact, insofar as the Applicant is concerned, the prosecution has recovered and seized an amount in excess of Rs. 19,00,000/- which militates against the prosecution's own case in the present FIR. He would also submit that apart from Gold ornaments which have been seized, certain cash amount has also been seized from the Applicant. I have impressed upon Mr. Kulkarni who would submit that the details are not available. He would submit that he would take specific instructions from the Investigating Officer to produce the same in order to justify the recovery. Let the details be furnished upon which the Application of the Applicant can be considered. One of the reasons which persuade me to consider the present Application is in view of the fact that four accused namely accused Nos. 7, 8, 10 & 11 have been granted bail by the learned trial Court by Order dated 02.12.2024. The Innova car used in the heist is admittedly belonging to the Accused No.

11 namely Kaushal Roy who is granted bail. Parity is claimed by Mr. Kazi. The only indictment against the Applicant – Accused No. 1 is that he was the driver of the Innova car which was used in the commission of crime but more than the alleged amount received by Applicant, the alleged recovery made from him and his Bank account is made by the prosecution. All necessary details shall be placed before this Court to enable this Court to consider the Application of the Applicant before the next adjourned date. Let the information be placed in the appropriate format by the concerned investigating officer.

5. Mr. Kulkarni would also inform me that report of the Test Identification Parade is awaited and the same shall also be placed before this Court before the next adjourned date.

6. Insofar as Accused No. 2 - Bashir Ibrahim Shaikh is concerned, in this case, a separate Application, being B. A. No. 4048 of 2024 is filed.

7. Ms. Bajoria, learned APP appears for the prosecution in the present case. Mr. Kazi, learned Advocate for the Applicants has drawn my attention to the case of the prosecution on page No. 41 of the Application. He would submit that the case of the prosecution is that he received a share of Rs. 17,73,370/- but the details of confiscation or seizure have not been stated at all. What is stated is recovery of Gold ornaments only without any further details. In view of the above order passed in case of Accused No. 1, learned APP is directed to place on record appropriate details of confiscation and seizure and the role of Accused No. 2 in the present case also.

*8. Stand over to **20.01.2025** under the caption **First On Board.**"*

5. In view of the specific submissions made by Mr. Kazi on the previous date which is delineated in the aforesaid order the prosecution was required to take appropriate instructions on the issue of recovery which is seen from the accused before me as appended on page no. 69 and 139 of the Application. The recovery panchanama dated 22.03.2024 pertains to Accused No.2 (Bashir Ibrahim Shaikh) who has voluntarily returned back the entire amount to the Investigating Officer in front of panch witnesses as recorded in the memorandum panchanama of given date. That apart Accused No.2 has also deposited three specific gold ornaments which are stated in the memorandum panchanama and the total recovery from the Accused No.2 is to the tune of Rs. 22,21,370/- as stated therein. Insofar as

Accused No.1 is concerned Page No. 142 of the memorandum of panchanama dated 28.03.2024, perusal of which shows that recovery of Rs. 19,55,200/- has been made and deposited with the Investigating Officer.

6. Insofar as the case of the complainant and as can be seen from the chargesheet examining role of the various accused in the crime is concerned, the chargesheet *qua* each of them details their role and the amounts received are specified *qua* each of them. Insofar as Accused No.1 and 2 are concerned their role and amounts received by them is delineated on page No. 40 and 41 of the Application. As against Accused No.1 an amount of Rs. 17,91,200/- whereas as against Accused No.2 an amount of Rs. 17,73,370/- has been delineated in the chargesheet as they having received the same amount. As against aforesaid not only recovery of the twin amounts is made by the prosecution but also of the gold ornaments which they had invested in. In any event *prima facie* it is seen that recovery by the prosecution is in excess of the amount as stated in the chargesheet by the prosecution. That apart the other accused namely Accused Nos. 7, 8, 10 and 11 have all been granted regular bail by the learned Sessions Court on this very ground which is delineated in the paragraph No. 6 of the order dated 02.12.2024. On parity and considering the aforesaid reasons Applicants are also entitled to be released on bail.

7. Hence, the following order is passed:-

ORDER

- (i)** Both Applicants are directed to be released on bail on furnishing PR. Bond in the sum of Rs. 1,00,000/- each with one or two sureties in the like amount;
- (ii)** Applicants shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for three months or as and when called;
- (iii)** Applicants shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for revocation of this order;
- (iv)** Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court; they shall deposit their passport with the Trial Court within one week of their release on bail from prison;
- (v)** Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vi) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or charge of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail revocation of this order.

8. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

9. In view of the above directions, Bail Applications stand allowed and disposed.

[MILIND N. JADHAV, J.]