

Ajay

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

CRIMINAL BAIL APPLICATION NO. 3788 OF 2024

Dharmendra alias Dharmesh Ranchhod Vaishnav .. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Vivek Punjabi a/w. Mr. Priyansh R. Jain, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025.

P.C.:

- 1.** Heard Mr. Punjabi, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.
- 2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking Regular Bail in connection with C.R.No.62 of 2020 registered with Narpoli Police Station for offences punishable under Sections 392, 395, 397, 452, 454, 380, 75 and 34 of the Indian Penal Code, 1860 (for short ‘IPC’); Sections 3 and 25 of the Indian Arms Act, 1959 and Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951.
- 3.** The date of the incident is 30.01.2020 and Applicant is arrested on 04.02.2020. Case of the prosecution is that Applicant

alongwith 4 other co-accused has committed the aforesaid crime in question. Out of 5 Accused persons, Accused Nos.1 and 2 are been prosecuted by the prosecution whereas Accused Nos.3, 4 and 5 are absconding till date. Accused No.2 has been granted bail by order dated 13.01.2023.

4. Mr. Punjabi, learned Advocate for Applicant – Accused No.1 would submit that the only distinction in the role of Accused Nos.1 and 2 is that the entire recovery of the ornaments which were stolen was made from the present Applicant i.e. Accused No.1, save and except the amounts which were distributed initially out of the cash amount which was taken by the Accused persons.

5. First Information Report (for short '**FIR**') is appended at page No.33 of the Application. It is dated 30.01.2020. It is *prima facie* seen to be improved upon and improvised by the supplementary statement recorded on 31.01.2020 followed by further supplementary statement on 04.02.2020. The material distinction found in the statement of the First Informant is that in the second and third statement he has alleged that Applicants were armed with a revolver while committing the crime which is *prima facie* absent and missing in the FIR. That apart, there is a distinct dichotomy in the statement made in the FIR *vis-a-vis* and the statement of his own sister who was present at the scene of crime which is appended at page No.74 of the Application.

6. The apparent dichotomy pertains to waking up of the First Informant when the alleged crime was taking place. It is noticed that the First Informant has categorically stated that he was woken up with the noise of opening of the drawer of the cup-board in the room and when he woke up he saw his sister having opened the drawer and asked her the reason for the same to which she responded and informed him that their father had asked her to take some money from the locker and she was doing the same for that reason. However, the statement of the sister appended at page No.74 of the Application followed by her second supplementary statement thereafter on 31.01.2020 and 04.02.2020 state she was unable to find the key to the locker in which the gold ornaments were kept and it is she who woke up the First Informant and asked him about the whereabouts of the keys and only thereafter she opened the locker and had a conversation with him. The aforesaid reason coupled with the fact that charge is not framed in the case and apparent long incarceration of the Applicant in jail since 04.02.2020 persuades me to consider the present Application.

7. Ms. Yadav, learned APP has vehemently attempted to oppose the Application for bail on two specific grounds namely that there is one antecedent of the Applicant and second the recovery in the present crime has been effected from the present Applicant. She would in her usual fairness inform the Court that charge has not been framed as yet

and long incarceration of Applicant is *prima facie* evident. Regarding recovery it is submitted that it has been effected.

8. Considering the aforesaid *prima facie* observations and long incarceration of Applicant pending trial persuades me to accept the submissions made by Mr. Punjabi. Applicant is therefore released on bail subject to following conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant 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 he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

9. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

10. Bail Application No.3788 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

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