

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 873 OF 2015

Prakash Vishnu Dhanve. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Prashant Pandey i/b. Mr. Kamlesh M. Gujar, advocate for
Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 28, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 25/12/2014 in
Crime No. 607 of 2014 registered at Dahisar Police Station for offence
punishable under Section 395, 506(II) read with section 34 of the
Indian Penal Code. The investigation is completed and charge-sheet
is filed.

3 It is the case of the prosecution that on 24th December, 2014 one Kesharsingh Jagatsingh Rajput lodged a report at the police station alleging therein that he knows the present applicant and his associates, as they are resident of the same area, where he runs a shop. He knows that these persons terrorise persons in the said area. It is further alleged that on 20/12/2014 he had closed his sweetmeat shop at about 11.55 p.m. and was going towards his house. The present applicant and his associates were standing at the side of the road. They stopped him. Thereafter, they had demanded money for purchasing beer. They had abused him. He had denied to oblige them and therefore, he was assaulted with fists and kick blows by the applicant and his associates. Thereafter, the complainant was constrained to inform the owner of Vanita Hotel to give them beer and that he would pay costs subsequently. Thereafter, it is alleged that the applicant had then given blow on the back of the complainant and asked him to order two more beer bottles. The complainant had placed the order. The demands had started

increasing. The complainant continued to oblige them with a hope that they would spare him at some point of time from the assault of the applicant and his associates. Thereafter, all of them had extorted him by threatening him with a broken beer bottle. They had taken Rs. 4,700/- from his pocket. The co-accused Sagar Bhuvad @ Ghubad had snatched golden chain weighing about 17 gm. The complainant was assaulted and thereafter, he was left free.

4 The complainant has specifically stated that he was scared of the present applicant and his associates and had threat perception since they are residents of the same locality and they indulge into goondalism. On the basis of his report, Crime No. 607 of 2014 for offence punishable under Section 395, 506(II) of the Indian Penal Code.

5 At the outset, the learned APP submits that in the present case, the charge is framed and the next scheduled date is 31/7/2015.

6 The learned Counsel for the applicant vehemently submits that the applicant is entitled for grant of bail on the following grounds:

Firstly, there is delay of four days in lodging the FIR and this would show that the complainant was neither vigilant nor diligent. It is then submitted that the complainant has not filed or furnished the injury certificate or any medical case papers to demonstrate and establish that he was assaulted by the present applicant and his associates. Thirdly, that the applicant does not have criminal antecedents. Fourthly, that the investigation is completed and charge-sheet is filed and therefore, further incarceration would be unwarranted. Fifthly, that according to the complainant, the chain was snatched by Sagar Bhuvad @ Ghubad and not by the present applicant and therefore, the applicant cannot be prosecuted for offence punishable under Section 395 of the Indian Penal Code.

7 The learned Counsel for the applicant has placed reliance upon the Judgment of the Punjab Court in the case of **Ganga Singh v/s. The State reported in AIR 1955 NUC 3440.** According to the

learned Counsel, the said Judgment has finely distinguished the offences defined as theft or robbery. According to the learned Counsel, the meaning of “carrying away” has been interpreted in the said judgment, whereas it is held that -

“The words “carrying away” as used in Section 390 mean that if fear of death, hurt or wrongful restraint is caused after committing the theft in order to carry away the property obtained by theft, the offence of robbery would be committed.”

The learned Counsel has missed the second line in which the Hon'ble Court has observed that “each case has to be decided in accordance with its own facts”.

8 The learned Counsel has then placed reliance upon the Judgment of the Patna High Court in the case of **Indrasana Kuer v/s. Sia Ram Pandey & ors. reported in 1970 Cri. L.J. 647**, wherein the Hon'ble Single Bench of Patna High Court has observed that -

“In extortion the will of the victim has to be overpowered by putting him in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury.”

The learned Counsel has also placed reliance on the observations of the Hon'ble Single Bench. in which the Hon'ble Single Bench has relied upon the decision of the Division Bench of the Patna High Court in the case of **Pati Kumhar v/s. Ahiv Kumhar reported in AIR 1954 Pat. 157**, wherein it was observed as follows :

“It is not in every case where theft has been committed as well as assault, that the transaction becomes robbery. The assault must be found to have been committed for the purpose of committing the theft, or in carrying away or attempting to carry away property obtained by theft.”

9 As against this, the learned APP has submitted that in fact, the complainant has given the plausible explanation for the delay in lodging the FIR. It is clearly stated that he had threat perception from the applicant and the co-accused. Moreso, because the co-accused have criminal antecedents and the present applicant was seen in the company of the co-accused and therefore, it is not necessary to enquire into as to whether the applicant had criminal antecedents or not.

10 Upon perusal of the papers of investigation, it is seen that in the course of investigation the Investigating Officer has recorded the statement of Jitendra Jagdish Joshi, jeweller from whom the chain was recovered. He has disclosed to the Investigating Officer that on 23/12/2014 the present applicant had been to his shop alongwith one Dinesh Patel and had sought to sell the golden chain. The present applicant was asked about the bill and at that time, he stated that he would give bill subsequently. The jeweller had paid him Rs. 33,300/- as a consideration for the said golden chain.

11 The Investigating Officer has also recorded the statement of Dinesh Patel, who had recommended the present applicant to the said jeweller. He had disclosed to the police that the present applicant had informed him that he has to pay school fees of his children and therefore, he was selling the chain which belonged to his brother-in-law. It was impressed upon them that the chain belonged to brother-in-law and was being sold for financial necessity. This by itself would sufficiently indicate that the present applicant was very much involved in the incident.

12 Upon perusing the recital of the FIR, it is further clear that the complainant was put in fear of injury and danger to life and in that manner, the chain was snatched away from him. Patna High Court has rightly observed that forcibly taking away will not come under the definition of extortion. However, it is clear that it has to be shown that the person had put him in fear of injury. The said observation is applicable to the present case. It is high time that such nefarious

activities have to be curbed. Granting bail on the ground that the charge-sheet is filed and person has no criminal antecedents would not suffice the cause. The custody of the applicant as an under trial is necessary as a deterrent policy. In view of this, the application being sans merit stands rejected.

13 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

14 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)