

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 1224 OF 2014

Shivsingh Virsingh Sikhalkar @
Dudhani

...

Applicant

vs.

The State of Maharashtra

...

Respondents

Mr. Subhash Jha i/b. Law Global, Advocate for the applicant
Mr.A.S.Shitole, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 11th February, 2015.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant is arrested on 25.1.2014 in Crime No.10 of 2014 registered with Kharghar Police Station for the offence punishable under Sections 395, 397 read with Section 34 of IPC.

2. It is the case of the prosecution that on 10.1.2014, Pankaj Mishra resident of Kharghar, Navi Mumbai, lodged an FIR at the police station alleging therein that on 9.1.2014, he had left his house for work. The family members returned home at about 10 p.m. After they retired for sleep, in the intervening night, two unknown persons who had muffled their faces, had entered into their

bedroom. They were armed with knives and other deadly weapons. They had threatened him of dire consequences and had asked them to hand over cash and jewellery. He has specifically stated that there were two persons standing outside the room of Nagendra Singh. They were also armed with weapons. He has described the persons as follows :-

“That the persons were between age group of 22 – 26. They were wearing black coloured jackets and jean pants. They had muffled their faces with a big handkerchief. He has given description of four persons as wearing black jackets. Images were got on the C.C.TV footage.”

The prosecution has placed on record images captured in the CC TV. It specifically shows that the persons who had entered the said building were wearing white jackets.

3. The learned counsel submits that admittedly, the recovery of the black jackets at the instance of the present applicant cannot be relied upon.

4. The learned APP submits that the present applicant has criminal antecedents and that the prosecution has filed an affidavit to that effect. Upon perusal of the affidavit, it appears that Crime No.10 of 2014 at Kharghar Police Station, No.13 of 2014 at Nerul Police Station No.17 of 2014 at Kalamboli Police Station and No.32 of 2014 at Manpada Police Station are registered under

Sections 379 and 395 of IPC. The learned counsel for the applicant rightly submits that all these offences are registered only after the applicant has been arrested in the present crime i.e. Crime No.10 of 2014 at Kharghar Police Station. It is submitted that the applicant was first arrested in Crime No.10 of 2014 and thereafter transferred in the other offences at Nerul, Kalamboli and Manpada. There is no doubt that there are lapses in the investigation and the investigation in such serious offence has been conducted in a callous manner by the investigating agency. Such an investigation would give benefit to the accused since the Court has to rely upon the papers of investigation and cannot impute their personal knowledge or any other factors and all these aspects would hamper the trial. However, as on today, the applicant has been in custody for more than one year and therefore, further incarceration would not be necessary and the applicant can be enlarged on bail on imposing certain stringent conditions. It is made clear that breach of the condition would entitle the prosecution to file an application seeking cancellation of bail.

ORDER

(i) The application is allowed. The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like

amount.

(ii) The applicant herein shall report to the Kharghar Police Station on every alternate day between 10 a.m. to 12 noon till the conclusion of the trial.

(iii) The applicant shall furnish his address and cellphone number to the investigating officer after his release. The investigating officer shall physically verify the address given by the applicant.

Application is disposed of with the above directions..

(SMT.SADHANA S.JADHAV, J.)