

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1334 OF 2015**

Javed Ibrahim Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. M. S. Mohite i/b Mr. Chaitanya Pendse for the Applicant

Ms. A. S. Pai, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 26TH OCTOBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 56 of 2015 registered with the DCB CID, Unit-10, for the alleged offences punishable under Sections 120B, 384, 388, 379, 376(2)(A)(i)(ii)(iii), 365, 366, 354(A)(1), 354(A)(2), 170, 341, 342, 247, 323, 324, 327, 509, 506(2), 201, 211, 414, 34 and 114 of the Indian Penal Code.

3. The incident in question has taken place on the intervening night of 2nd and 3rd April, 2015. It is alleged by the prosecution that a team of police officers attached to Sakinaka Police Station along with some others accosted the first informant/prosecutrix and her associate Kanvaldeep Singh at midnight, outside the hotel Holiday Inn, on the ground, that the first informant and her associate were indulging in immoral trafficking activities. The first informant and her friend Kanvaldeep were taken to the Sakinaka Police Chowki and thereafter to Sangharsha Nagar Police Station and the prosecutrix was kept in confinement. According to the prosecutrix, ornaments and watch worn by her along with the cash of Rs. 4,98,000/- was forcibly removed from her possession by one Ayesha @ Aasha Premnarayan Malvia, who is also co-accused in the said case. It is alleged that the co-accused police officers molested the first informant when she was kept in confinement in Sangharsha Nagar Police Chowki. It is further stated that the first informant was asked to pay a sum of Rs. 4,00,000/- if she did not want to face any prosecution for indulging in an alleged act of immoral trafficking. According to the prosecution, Kanvaldeep, a friend of the prosecutrix went to arrange the said sum of Rs. 4,00,000/-. Kanvaldeep is stated to have

called one Shashikumar and asked him to arrange the said amount, which was arranged and paid to co-accused Ronghe on 3rd April, 2015 at about 2:00 p.m. After receipt of the said amount, the prosecutrix and her associate Kanvaldeep Singh were allowed to leave the police station. Initially, the FIR was registered vide C.R. No. 00 of 2015 with the MIDC Police Station and was subsequently transferred to DCB CID, Unit-10, pursuant to which, the aforesaid C.R. came to be registered.

4. Learned Counsel for the applicant submits that admittedly there are no allegations of kidnapping and rape as against the present applicant. He submits that according to the prosecution, the only allegation is that he met Kanvaldeep Singh on 3rd April, 2015, along with co-accused Romeo at the police chowki. Thereafter, the said persons i.e. the applicant and co-accused Romeo went to collect the said amount of Rs. 4 lakhs from Shashikumar. At about 1:30 a.m, Kanvaldeep Singh is alleged to have called Shashikumar and disclosed to him that two persons i.e. the present applicant and one Romeo would come to collect the said money. Accordingly, the description of the said persons, who were coming to collect the money was given to Shashikumar and Shashikumar's description

was also given to the applicant and Romeo.

5. Learned Counsel for the applicant further submits that although the name of the applicant finds place in the statement of Kanvaldeep Singh that he had met Javed (applicant), Kanvaldeep has not identified the applicant in the identification parade which was held on 19th May, 2015. He submits that Shashikumar from whom the amount of Rs. 4,00,000/- was allegedly collected by the applicant and Romeo, was not sent for identifying the accused in the identification parade. He further submits that according to the prosecution, it was only Ronghe who came back to the police station and handed over the said amount to the co-accused. He submits that there is a recovery of Rs. 11,000/- shown at the instance of the applicant from his residence on 21st April, 2015.

6. Learned A.P.P vehemently opposed the bail application. She submitted that although there are no allegations of kidnapping and rape as against the present applicant, there are allegations of extortion and Section 120B has been added to the present case. She submits that the applicant was with co-accused Nos. 1 to 3 i.e. API Sunil Khatpe and others and that it

was accused No.1-Sunil Khatpe, who instructed the applicant and Sanjay Ronghe @ Romeo to collect an amount of Rs. 4,00,000/- from Shashikumar. She submitted that the present applicant and the co-accused Ronghe had contacted Kanvaldeep Singh and had thereafter gone to meet Shashikumar to collect the said amount. She submitted that out of the sum of Rs. 4,00,000/-, a sum of Rs. 15,000/- was given to the applicant, out of which, the applicant spent Rs. 4,000/- and Rs. 11,000/- has been recovered from him. She does not dispute the fact that the applicant has not been identified by Kanvaldeep in the identification parade, however, she submits that the applicant has been specifically named as 'Javed' by Kanvaldeep Singh, in both, the statement recorded under Section 161 as well as under Section 164 of the Criminal Procedure Code. She also relied on certain CDR records in support of her statement to show that the applicant was in touch with Yogesh Ronghe (accused No. 3) and Sunil Khatpe (accused No. 1). She also submits that there is one antecedent of the year 1994 which was registered as against the present applicant for extortion.

7. Learned Counsel for the applicant submits that mobile No. 8652722936 allegedly used by the applicant, is not reflected in the

panchanama which pertains to seizure of mobiles in the said case. He relied on page 147 of the application in support of his submission. He submits that there is nothing in the entire charge-sheet to show that this number belonged to the present applicant or that he was using the same.

8. Perused the charge-sheet, in particular, the statement of the prosecutrix, Kanvaldeep Singh and Shashikumar. Admittedly, there are no allegations of either kidnapping or rape as against the applicant. It appears that although the applicant has been named as 'Javed' in the statement of Kanvaldeep Singh, recorded under Section 161 as well as under Section 164 Cr. P.C, he has not been identified by Kanvaldeep in the identification parade which was held on 19th October, 2015. It may be noted that Kanvaldeep had also given the applicant's description, in his statement, but failed to identify him. It also appears that Shashikumar from whom the said amount of Rs. 4,00,000/- was allegedly collected by the applicant and Romeo was not sent for the identification parade which was held. According to the learned A.P.P, an application was preferred before the learned Sessions Judge, for sending Shashikumar for the identification parade, however, the said application was rejected. The said order of

rejection was however not challenged by the prosecution. As far as the CDR records tendered by the A.P.P during arguments (as the same are not part of the charge-sheet), of the said date, between 1:30 p.m. to 2:00 p.m. i.e when the applicant is alleged to have gone alongwith Ronghe to meet Shashikumar to collect the said amount of Rs. 4,00,000/-, are *prima facie* not of much assistance *qua* the applicant.

9. Considering the allegations as against the applicant and the material on record qua the applicant, the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the office of DCB CID, Unit-10 on every Saturday from 10:00 a.m. to 12:00 noon for a period of three months and thereafter on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.