

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAILAPPLICATION NO. 2205 OF 2014

Shri Jillusingh Shersingh Dudhani ... Applicant
vs.
The State of Maharashtra ... Respondents

Mr. Kuldeep S. Patil, 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 13.1.2014 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. In the present case, the first information report also shows that all the accused persons were wearing black jackets and had muffled their faces. No test identification parade is held. The recovery panchnama of clothes under Section 27 of Cr.P.C. would show that the investigating officer has recovered blackish coloured jean pants. The printed ash coloured shirt which does not match either with the description given in the first information report or the images in the CC TV footage. It is pertinent to note that the white coloured Tata Sumo Jeep was seen outside the gate of Growmore Building. The learned APP submits that the said jeep has been seized.

3. It is pertinent to note that the investigating officer has not taken any efforts even to ascertain the ownership of the jeep, the chesis number, etc. There is no enquiry with the RTO for the reasons best known to the I.O. It is settled position of law that in absence of the incriminating material produced on record, the Court cannot record a conviction. However, it is commonly seen in several cases that there are lapses in investigation for the reasons best known to the I.O. That is precisely the reason why there are acquittals recorded. In the present case, the application is pending hearing since July 2014. The first order was passed on 28.7.2014. In the order dated 6.8.2014, at the time of hearing of the Criminal Bail application No.1224 fo 2014, this Court (Coram: A.M.Thipsay, J.) had recorded the lapses in the investigation and had observed that the copy of CCTV footage was not given to the accused persons. This Court had further observed that “if it is intended to rely on this material, it must be included in the charge-sheet and also the same should be made available to the applicant in the context of the present bail application.” However, no steps were taken and from time to time the matter was adjourned on most of the occasion at the request of the learned APP.

4. On 3.12.2014, Hon'ble Justice P.D. Kode had observed “By way of last chance prosecution is directed to keep the concerned I.O. Present without fail on the said date.” Today also, the I.O. is not present and the learned APP cannot

make certain submissions in absence of specific instructions. In this application, the learned APP submits that the applicant has criminal antecedents. In fact, it appears from the affidavit and the records that the present applicant has first been arrested in Crime No.10 of 2014 i.e. the present crime registered at Kharghar and thereafter has been arrested in undetected offence by transferring him in Crime No.13/2014 registered at Nerul Police Station, No.17 at Kamboli, No.32 at Manpada and 3/2012 at Khopoli. Copy of charge-sheet In Crime No.3/2012 is taken on record and marked "X" for the purpose of identification.

5. The learned APP in the affidavit filed on 15.11.2014, has stated that the applicant is also an accused in Crime No.3/2012 registered at Khopoli Police Station and also is booked under Section 3(1)(ii), 3(2) and 3(4) of MCOC Act.

6. This Court has perused the charge-sheet of Crime No.3/2012. The charge sheet is filed in the Special Court dealing with MCOC. It is pertinent to note that the applicant Jilusingh Sherinsgh Dudhani is not shown as an accused in Crime No.3/2012. The learned counsel for the applicant rightly submits that the affidavit is misleading. The said offence cannot be considered as antecedents since he has been transferred from one crime to another after he was arrested in the present case. In view of this, the applicant has made out a case for grant of bail.

7. The observations made hereinabove are prima facie in nature and

shall not be considered while deciding application for quashing of FIR, or discharge application or at the time of trial.

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.)