

Anand

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

BAIL APPLICATION NO.28 OF 2016

Tanvir Akhilbhai Hashmi .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.Khan Abdul Wahab, Advocate, for the Applicant
Mr.H.J.Dediya, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.07.2016

P.C.

. Heard learned counsel for the Applicant
and the learned APP for the Respondent – State.

2. By this Application, the Applicant
seeks his enlargement on bail in connection with
C.R.No.56 of 2015 registered initially with the
MIDC Police Station and subsequently,
transferred to the DCB CID 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, 347, 323,

324, 327, 509, 506(2), 211, 414, 114 r/w.34 of the Indian Penal Code.

3. According to the prosecution, the incident took place in the intervening night of 02.04.2015 and 03.04.2015. It is alleged that a team of police officers attached to Sakinaka Police Station along with some others, accosted the Complainant/prosecutrix and her friend, outside "Holiday Inn", on the ground, that they were indulging in immoral trafficking activities. The prosecutrix and her friend were initially taken to Sakinaka Police Station and thereafter, Sangharsha Nagar Police Station, where the prosecutrix was kept in confinement. According to the prosecution, the prosecutrix was abducted and her associate was directed to bring a sum of Rs.4,00,000/-, if they did not want to face prosecution. According to the prosecution, during the said time, when the prosecutrix's friend went to fetch money, some

police officers outraged her modesty and also committed an offence punishable under Section 376 of the Indian Penal Code.

4. Learned counsel for the Applicant sought bail on the ground of parity as well as on merits. He submitted that similarly placed co-accused have been enlarged on bail by this Court i.e. Javed Ibrahim Shaikh, Sikandar Mirza, Ayesha alias Asha Prem Narayan Malviya and Suresh Duryodhan Suryawanshi. He submitted that admittedly there are no allegations of outraging modesty or of rape as against the Applicant. According to the learned counsel for the Applicant, the Applicant was not concerned with the alleged offences. He relied on page No.451 of the Application i.e. history given by the prosecutrix to the Doctor, to show that the prosecutrix has herself disclosed that she was not permitted to go to the Hotel room, as she did not have any identity proof, which is

contrary to the prosecution case, that the Applicant was asking her to come to the room to collect the money, but she refused to go.

5. Learned Special Public Prosecutor opposed the Bail Application. She submitted that the statement of Rahul Shrivastava shows that the Applicant had followed the prosecutrix & her friend in a car, initially to the Sakinaka Police Station and thereafter, to the Sangharsh Nagar Police Station. She submitted that the Applicant was outside the said police chowki, in a car alongwith co-accused Ibrahim and Ayesha, (who have been enlarged on bail by this Court). She further submitted that the Applicant was present in the chowki when the demand for extortion was made by the police officers. She has also relied on the statement of the prosecutrix to show that the present Applicant had met her in the Coffee shop of "Holiday Inn" and had asked her to come to his room to collect

a sum of Rs.2,00,000/-, which was promised to her by Aman. She also relied on the statement of Rahul Shrivastav, a friend of the Applicant to show that he along with Ayesha, the present Applicant and Ibrahim had followed the police vehicle, after the prosecutrix left Holiday Inn.

6. Perused the papers. At the outset, it must be mentioned, that admittedly, there are no allegations of outraging of modesty or rape as against the Applicant, but the allegations are, of abetment and conspiracy to commit the alleged offences. It appears from the statement of one of the witnesses i.e. Rahul Shrivastava that the Applicant along with other co-accused followed the police vehicle, in their car, and that they waited in their car outside the police station and thereafter outside the police chowky. It is not disputed that co-accused Javed Shaikh, Sikandar Mirza, Ayesha Malviya, Suresh Suryawanshi have been enlarged on bail by this

Court and that the said orders have not been challenged in the Apex Court. The role of the Applicant is similar to that of some of the co-accused who have been enlarged on bail. Investigation is complete and charge-sheet is filed. Considering the nature of allegations, more particularly the fact, that there are no allegations of outraging of modesty or rape or kidnapping, against the Applicant but essentially of abetment and conspiracy to commit the alleged offences, the Applicant is enlarged on bail on the following terms & conditions:

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- (ii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iii) 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;

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

(v) The applicant shall file an undertaking with regard to Clause Nos.(ii) to (iv) within two weeks of his release in the trial Court;

(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.

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

8. 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.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)