

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

ANTICIPATORY BAIL APPLICATION NO.238 OF 2016

Shreyas Kiran Samel andors.Applicant.
Vs.

The State of Maharashtra.Respondent.

Mr. Subhdh Desai i/by Aditya Sawant for the Applicant.
Mrs.S.S.Kaushik,APP. for the Respondent State.

CORAM : A.S.GADKARI, J.
DATE : 08TH FEBRUARY, 2016.

PC:

The applicants are apprehending arrest in CR No.I-967 of 2015 dated 23.12.2015 registered with Mahatma Phule Chowk Police Station, Kalyan District Thane under Section 395 of the I.P.C.

2) The first informant namely Ramesh Wavhal has lodged first information report dated 23.12.2015. In his report he has stated that on 23.12.2015 at about 1.00p.m. the applicant No.1 along with other applicants came at the scene of offence along with one private JCB machine and started excavation there. The complainant therefore went at the spot and questioned the applicant

No.1 about the same. The applicant No.1 informed the complainant that he is connecting old gutter line to the other one. The complainant questioned him as to why the employees from the Municipal Corporation are not with him to which the applicant No.1 told him that he has brought JCB and being a social worker he is doing the said work. The complainant resisted for the said act of Applicant No.1. At that time the applicant No.1 started assaulting the complainant with fist blows. When the complainant tried to resist the said assault the applicant No.1 along with other applicants assaulted the complainant with fist and kick blows. At that time the applicant No.1 snatched a gold metal chain weighting 21 grams from the person of the complainant. The applicant No.1 also assaulted on the neck of the complainant. The complainant has specifically stated that co accused namely Ishwad (Applicant No.2) snatched the mobile phone of Samsung Company from the hand of the complainant. The applicant No.1 and other applicants ran away from the scene of offence. The complainant thereafter went to the police station. The police directed him to take medical aid first. Accordingly the complainant took the medical aid and thereafter lodged the present first information report.

3) The learned counsel for the applicant submitted that the applicant No.1 is a Corporator and the present

complaint is lodged out of political enmity. He further submitted that his associate political worker namely Nitin Kasare has lodged first information report which is prior in point of time under Section 7(d) of the Civil Rights Protection Act with the said police station against the complainant in the present crime. He submitted that being a social worker he was doing the said work of repair of gutter. That the Municipal Corporation had constructed the said gutter and therefore there was no necessary to do excavation at the spot. He submitted that the complaint is falsely filed against him. He lastly submitted that for the recovery of the alleged stolen or robbed property custodial interrogation of the applicant is not necessary. He lastly submitted that the present application may be allowed by granting pre-arrest bail to the applicants.

4) I have minutely perused the documents pertaining to the investigation of the present crime i.e. CR No.I-967/2015. The complainant in unequivocal terms has specifically attributed the role of robbery of his gold metal chain from his person to the Applicant No.1 and the mobile phone by applicant No.2. Apart from the complainant Ramesh Wavhal there are four other eye witnesses who have corroborated the version of the complainant. The witnesses though were not knowing the name of the complainant have specifically stated that the

applicant No.1 and his associates/applicants Nos.2 to 6 assaulted the person who was conducting a tea stall at the scene of offence and the applicant No.1 by giving a blow on the neck of the complainant has snatched the gold metal chain from the person of the complainant. They have also stated that the other person who was accompanying the applicant No.1 has snatched the mobile phone from the hands of the complainant.

5) It is to be noted here that the said complainant has subsequently given a statement dated 23.12.2015 to the police thereby correcting his version which he had given at the time of lodging of first information report. He has stated that the name of Prakash Gurav (Applicant No.5) is inadvertently mentioned and the correct name of the said person is Prashant Gangurde. It appears from the statement of the complainant and his subsequent statement dated 23.12.2015 that the complainant has given true and correct version of the incident which had taken place at the scene of offence. I am of the opinion that the version given by the complainant is prima facie reliable and trustworthy.

6) It is to be noted here that for the recovery of the said gold chain and the mobile phone of the complainant, custodial interrogation of the applicants No.1 and 2 is necessary at the hands of police. The Applicant Nos. 3,4 and 6 were the associates/co-accused

with applicant NO.1 and have taken active part in commission of the present crime under Section 395 of the Indian Penal Code.

After taking into consideration the serious allegations against the applicants and the gravity of the offence, I am not inclined to grant the protection of pre arrest bail to the Applicant Nos.1,2,3,4, and 6.

7) As far as applicant No.5 is concerned as stated herein above, the complainant has given supplementary statement that the name of applicant No.5 Prakash Gurav has been inadvertently mentioned in the first information report instead of Prashant Gangurde. In view of the same the applicant No.5 is hereby protected by way of pre arrest bail. Hence, the following order.

ORDER

a) The application in respect of Applicant No.1 Shreyas Kiran Samel, Applicant No.2 Mehul Dilip Ishwad, Applicant No.3 Vishal Purshottam Vedpathak, Application No.4 Nayan Bhanudas Dhere and Applicant No.6 Nitain Kasare is hereby rejected.

b) The application of Applicant No.5-Prakash Dattatraya Gurav is allowed in the following terms.

i) In the event of arrest of the applicant No.5

Prakash Dattatray Gurav in Cr No.I-967/2015 he may be released on his furnishing PR bond of Rs.20,000/- with one or two solvent sureties in the like amount.

ii) The Applicant Prakash Gurav shall not tamper with the evidence and or influence the prosecution witnesses.

Application is partly allowed in the aforesaid terms.

At this stage the learned counsel for the applicant submitted that the applicant was being protected by an interim order of the Trial Court till 11.2.2015 and the same relief may be extended. After taking into consideration the fact that the applicants except applicant No.5 are alleged to have been involved in a serious crime and the fact that this court has not granted any relief earlier to the applicants, the said prayer is hereby rejected.

(A.S.GADKARI, J.)