

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

CRI. BAIL APPLICATION NO. 649 OF 2016

Vitthal Mahadeo Shelar

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr. S. V. Kotwal, Advocate for the Applicant.

Mr. Arfan Sait, A.P.P. for the Respondent – State.

Police Havaldar – Mr. Arvind Kale, (Paud Police Station, Pune)
is present.

CORAM : A. M. BADAR, J.

DATE : 21st JULY, 2016

P.C. :

1 The applicant/accused in Crime No. 137 of 2013 for the offences punishable under sections 364A, 384, 385, 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code and under section 3(25) of the Arms Act, registered with Paud Police Station, Pune, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. In his submission, there is no legal evidence to connect the applicant with the crime in question. He argued

that at the relevant time, the applicant was behind the bar, as under trial prison.

3 Learned APP opposed the application by pointing out that there is confessional statement of co-accused - Umesh @ Nanya Arun Rairikar which implicates the applicant/accused in the crime in question. He stated that the said confessional statement is admissible in view of the judgment of the Hon'ble Supreme Court in the case of **Mehboob Ali & Ors. vs. State of Rajasthan** reported in 2015 AIR SCW 6123. The learned APP relied on the judgment of the Supreme Court in the matter of **Neeru Yadav vs. State of Uttar Pradesh** (2015 AIR SCW 5416) in criminal appeal no.1272 of 2015 decided on 29.09.2015 to point out the factors to be considered at the time of releasing an accused on bail.

4 Perused the chargesheet. According to the prosecution case, informant Krushnarao Shelke was abducted on 20.09.2013, when he was proceeding in his jeep alongwith his nephew Mayur, by the applicant and his associates. Six accused persons then started demanding ransom of Rs. 25 lakhs. The informant averred that he was picked up by six persons and on the way, they demanded sum of Rs. 25 lakhs from him. He arranged sum of Rs. 7 lakhs through his acquaintance named Shailesh and that amount was paid to the

associate of accused persons at octroi check post. Only evidence which is pointed out by the learned APP is that of memorandum of statement of accused -Umesh @ Nanya Arun Rairikar which has resulted in recovery of amount about Rs. 2.07 lakhs. In the confessional statement of Umesh @ Nanya Arun Rairikar, he confessed that the incident of abduction and extortion took place is at the instance of the present applicant-Vitthal Shelar. This confessional statement is before the police when the said accused was in the custody of the police. As such, the same is hit by section 25 of the Evidence Act. Section 27 of the Evidence Act makes a fact discovered on the basis of confessional statement of the accused relevant.

5 Considering the nature of the evidence against the present applicant, his criminal antecedents becomes inconsequential. Except confession by the co-accused, there is no other evidence against the present applicant for connecting him with the crime in question. Hence, the following order :

ORDER

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 137 of 2013 for the offences punishable under sections 364A, 384, 385, 143, 147, 148, 149, 323, 504, 506 of the

Indian Penal Code and under section 3(25) of the Arms Act, registered with Paud Police Station, Pune, be released on bail on executing PR Bond in the sum of Rs. 30,000/- and on furnishing solvent surety in the like amount.

- iii. As a condition of this order, the Applicant should co-operate with the trial court in expeditious disposal of the trial.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should not commit any offence of similar nature in future.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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