

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1690 OF 2016

Mr. Mujammil Muddi Ali Shaikh		
@ Mujammil Khan	..	Applicant
vs.		
State of Maharashtra	..	Respondent

Mr. Kuldeep S. Patil, Advocate for the applicant.
Mr. Arfan Sait, APP, for the State.
Mr. H.B.Kalsekar, API, Taloja Police Station, Navi Mumbai, present.

CORAM: SMT.SADHANA S.JADHAV,J.
RESERVED ON : 24th August, 2016
PRONOUNCED ON: 20th September, 2016.

P.C.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973.

2. The applicant in Criminal Bail Application No.1066 of 2016 happens to be brother of the applicant in Criminal Bail Application No.1690 of 2016. Criminal Application No.471 of 2016 has been filed by the intervener to oppose the grant of bail. The applicant is arrested on 1.1.2016 in Crime No.6 of 2016 registered at Taloja Police Station, Dist. Raigad on 13.1.2016 for the offence punishable under Sections 307, 382,

379, 107, 109 read with Section 34 of the Indian Penal Code and under Section 11 of Prevention of Cruelty to Animals Act, 1960 and under Sections 5(b)(1), 9, 9(b) and 11 of Maharashtra Animal Preservation (Amendment) Act, 1995 by the complainant Chetan Sharma, who claims to be a Animal Right Activist.

3. The investigation is completed and charge-sheet is filed.

4. It is the case of the prosecution that on 13.1.2016, Shri Chetan Sharma lodged a report at the police station alleging therein that on 12.1.2016, he received a secret information that one Raju Lanka and his associates and Raju Ungli @ Iqbal Kallua Qureshi and his partner Raeesa are running an abattoir illegally and they are also trading in beef and meat. The complainant had also learnt that the said cattle are stolen by Mulla @ Intezar Ali Shaikh applicant through his workers. There was a specific information that on that day, Mulla was travelling from Raigad in his red coloured Scorpio No. MH-06-T 4479 and was carrying a bullock in the said jeep. That the bullock was injected with some spurious injection. It was also reported that the information was that the applicants were travelling via Kalamboli, Dhansar Tol Naka, etc. The complainant had informed the

secret informer that he would help the police to intercept the said vehicle and at that time, he was given a word of caution that Mulla carries deadly weapons along with him and he mounts assault upon any person who would interfere with his business. The complainant has further informed that he along with his bodyguard N.S.Bagul went to Kalamboli Circle at about 3 a.m. He had informed about it to his associates Khimji Patel and Jairam patel. They waited at Dhansar Tol Naka. The secret informer had again given an information that the car had passed Kalamboli Circle and was proceeding towards Dhansar Tol Naka. According to the complainant, he had passed on the information to Taloja Police Station as well as New Bombay Control Room. He saw the car coming and therefore, had started following the car at close distance. There was heavy traffic and therefore the car stopped at a distance. The complainant had stopped his car just behind the car of the accused person. They asked the driver of the car to stop. His bodyguard had opened the door of the car and attempted to accost the person sitting next to the driver. It is alleged that they had brandished the deadly weapons. That the driver had attempted to take his car in the reverse direction only to cause injury to the complainant and his associates who were seated in the car. They jumped out of their car. The persons in the car had taken advantage of the situation and had fled from

the spot. The complainant claims to have seen four persons in the said car. In the meanwhile, officers of Taloja Police Station had also reached the spot. They opened the car and found that there was a bullock in the car which seems to be sedated. Additional police staff was called. The legs of the bullock were tied with a rope. The mouth of the bullock was also tied. The complainant called for a vehicle/tempo to send the bullock to 'Goshala'. It is alleged that in the car they also found syringe and bread. There were deadly weapons in the said vehicle. On the basis of the said report, Crime No.6 of 2016 was registered against the applicant and other unknown persons. The charge-sheet is filed. The applicant is praying for enlargement on bail.

5. The learned counsel for the applicant submits that the applicant has been arrested only on the ground that he happens to be brother of Intezarali Muddi Ali Shaikh. It is also submitted that investigation is completed and charge sheet is filed. That there is no cogent and convincing evidence to show that the applicant has committed the offence as alleged against him.

5. It is also submitted that the applicant has been falsely implicated on suspicion. That the names of the accused are not reflected in the FIR. The applicant has been in jail for almost more than 8 months. The

offence is punishable upto five years. That there is no cogent and convincing evidence against the applicant and therefore further incarceration is unwarranted and unjustified.

6. It is also submitted that on 16.3.2016, the application of the present applicant was withdrawn on the ground that during the pendency of the application, the charge sheet was filed and hence liberty was granted to file an application after filing of charge sheet and that the same shall be considered on its own merits.

7. The learned APP submits that at the relevant time, the applicant was driving the vehicle. His cellphone was found in the vehicle. Considering the call detail records, the applicant was arrested. The said vehicle was purchased in the name of the wife of his brother.

8. The learned counsel for the applicant submits that the co-accused i.e. Nabi Chand, whose name is mentioned in the first information report, has been enlarged on bail and, therefore, the present applicant, in view of the fact that investigation is completed, also deserves to be enlarged on bail.

9. The learned APP has submitted that it is the case of the prosecution that the bullock was stolen. The condition in which the bullock

was found in the car would clearly indicate that there was cruelty meted out to the dumb animal. It is also submitted that the applicant is a habitual offender and has indulged into similar offences. Earlier he was enlarged on bail, but has continued to indulge into similar offences.

10. The learned counsel for the applicant also submits that none of the witnesses has actually seen the applicant in the car and that no specific role is attributed to him.

11. The learned counsel for the intervener has submitted that the dumb animal cannot retaliate and cruelty is meted out to the dumb animal. It is also submitted by the learned counsel for the intervener that there is no question of false implication since there was no personal animosity between the complainant and the accused persons. It is also submitted that the accused had attempted to run over the complainant after identifying him and that the complainant had a narrow escape. It is also submitted that the applicant does not deserve to be enlarged on bail since he would misuse his liberty. According to the learned counsel for the complainant, the applicant is using a cellphone while in jail and is an influential person of which the complainant has complained by a letter dated 8.4.2016. According to the

learned counsel for the intervener, Crime No.63 of 2012 is registered at Kalvan Police Station against the applicant. He is charge-sheeted and then enlarged on bail. Crime No.42 of 2013 is also registered against the applicant at Dieghar Police Station on 13.6.2011. Crime No.10 of 2014 is registered at Padgha Police Station. Charge sheet is filed and the applicant is enlarged on bail. Similarly, in Crime No.38 of 2015 registered at Kalamboli Police Station. he was arrested and released on bail in Crime No.127 of 2015. The applicant was granted pre-arrest bail in Crime No.127 of 2015 and one non-cognizable case is registered at Taloja for giving threat to the informer-intervener. It is also submitted that he does not have permanent residence and keeps on changing address and hence he does not deserve to be enlarged on bail.

12. The learned counsel has also relied upon some citations wherein the bail was cancelled by the Hon'ble High Court of Patna in the case of **Arun Kumar Dutta vs. Pawan Kumar Didwani (1995) 0 Cr.L.J.3274**, wherein a false statement was made by the accused-applicant.

13. The offence under Section 5B of the said Act has been made non-bailable only by virtue of the Maharashtra Act No.5 of 2015. Earlier the offence punishable under Sections 5A and 5B were punishable upto six

months.

14. In the present case, Section 307 of the Indian Penal Code may not be attracted for the reason that the allegation of the complainant is that the inmates of the said vehicle which was being driven by the accused persons was taken in reverse direction only to run over the complainant who was seated in the car. By no stretch of imagination it can be said that the accused persons had attempted to commit murder of the complainant and hence the applicant deserves to be enlarged on bail. As far as the offence under the Maharashtra Animal Preservation (Amendment) Act, 1995 is concerned, it is true that the bullock was found in the said car. It was in a sedated stage. Syringes were also found in the vehicle. For the time being, it cannot be said that the said bullock was stolen by the applicant. In any case, it is neither the case of the applicant that he was the owner of the bullock. However, all these aspects may be subject to consideration at the time of trial. As on today, the applicant has been in custody for more than 8 months. The offence is punishable upto five years and not less than six months.

15. Section 41, Cr.P.C. contemplates that in a non-bailable offence

punishable for less than 7 years, the police shall issue notice to the accused before taking him into custody and only upon recording subjective satisfaction to the effect that further investigation would not be fair unless there is custodial interrogation, the accused shall not be taken into custody. In the present case, no notice was issued. As on today, charge-sheet is filed and hence further incarceration would be unwarranted and unjustified. The applicant cannot be denied liberty only on the ground that he does not have permanent residence in Mumbai. Poverty cannot be construed as an embargo to deny liberty to an individual. Earlier, the applicant was enlarged on bail since it was a bailable offence. Care can be taken by the Court to see that the applicant is available for the purpose of trial. It is in these circumstances that the applicant deserves to be enlarged on bail.

16. Since the Bail Application No.1066 of 2016 is allowed, in view of the doctrine of parity, the applicant also deserves to be enlarged on bail on the same conditions.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent, local sureties in the like amount.

- (iii) The applicant shall report to the concerned police station on every Sunday between 10 a.m. to 12 noon till the date of framing of charge.
- (iv) Upon failure to attend on any two consecutive dates, the prosecution would be at liberty to seek cancellation of bail.
- (v) The applicant shall not leave New Bombay or Raigad District till the conclusion of the trial.
- (vi) The applicant shall give his landline number, cellphone number and address to the Investigating Officer on the date of first appearance before the police.

The Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)