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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1927 OF 2015

Kamlesh Rambhadur Shah

..Applicant

Vs.

The State of Maharashtra

..Respondent

Ms. Tripti R. Shetty for Applicant.

Ms. A.T. Javeri, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 1st March 2016.

P.C.

1 The applicant is seeking bail in CR No.469 of 2013 registered with Juhu Police Station, Mumbai under Sections 394, 397, 448, 342, 506(2), 120-B of IPC and under Sections 4, 25 and 27 of Indian Arms Act.

2 The prosecution case in brief is that, the complainant namely Shri Suketu P. Shah was residing along with his wife and two daughters at the address mentioned in the FIR. That ten days prior to the incident, the earlier servant of the complainant namely Naresh had brought another servant by name Krishna Damai as a full-time servant. That as the said Krishna Damai was not well for a few days, therefore at his request the

present applicant who is the brother of Krishna was allowed to do the household work two days prior to the date of incident. That on 21.12.2013 after having dinner the complainant and his family members went to sleep. The applicant was sleeping in the drawing room. In the wee hours of 22.12.2013 at about 3.00 a.m. somebody knocked the door of the complainant's house. The wife of the complainant namely Aarti woke up and opened the door. At that time the applicant told the wife of the complainant that her daughter namely Harshi was calling her. When the wife of the complainant was leaving to go to the bed-room, the applicant pushed her. The wife of the complainant fell down. At that time three persons entered into the house of the complainant. Out of the said three persons, one person was Naresh. Naresh was holding a chopper in his hand. Out of the two persons, one more person was having chopper in his hand. The complainant and his wife were threatened at the point of chopper and were forced to sit in the corner of the room. The applicant along with other accused persons searched the cupboards. They opened the wardrobe, robbed the money and ornaments from the said cupboard along with other articles and were to leave the place. At that time the co-accused Naresh cut the wire of the land-line phone. In the meantime, somebody informed the police about the incident. When the applicant and other accused persons

realised that the police have surrounded the scene of offence, the co-accused Naresh threatened the complainant and his wife and told them, not to raise their voice otherwise they would outrage the modesty of their daughters. The applicant and other accused persons threatened the complainant to give key of the locker. As stated earlier, by that time the police had surrounded the said premises. It is the further prosecution case that the police broke open the window panel of the house and entered into the room. The police thereafter overpowered the accused persons and apprehended them at the spot. During the search of the accused persons, the entire articles which were robbed by the applicant and the other accused persons, were found and the same were seized. After completion of investigation, the police have filed chargesheet.

3 The learned Counsel for the applicant submitted that in the present case the Investigating Agency has not attributed any role to the present applicant to the extent that applicant was holding any weapon and extended threats to the victim. She further submitted that the co-accused Naresh and Krishna Damai were having choppers in their hands and therefore in the present crime the Section 397 of IPC cannot be attracted to the present applicant. In support of her contention, she relied on two decisions of the Supreme Court namely (1) Phool Kumar Vs. Delhi

Administration reported in AIR 1975 SC 905 and (2) State of Maharashtra Vs. Mahipal Singh Satyanarayan Singh reported in 1996 Cri L.J.2485. There cannot be any dispute about the interpretation of law made enumerated by the Supreme Court in the case of Phool Kumar (supra). It is to be noted here that in the case of Phool Kumar there was no application of Section 120(B) of IPC. So also in the case of State of Maharashtra Vs. Mahipal Singh (supra) Section 34 of IPC was applied therein. In view of the peculiar facts of the present case in hand according to me, the reliance placed by the learned Counsel for the applicant on the aforesaid two decisions is misplaced.

4 As far as the present applicant is concerned, the police have applied Section 120-B to the present crime. A bare perusal of the record discloses that the applicant in conspiracy with other accused persons gave them intimation and/or information about the inmates of the complainant's house. The other accused persons in furtherance of conspiracy entered into the house of the complainant in the wee hours and committed the crime. It is only because of the quick response given by the police, further aggravated form of offence or damage to the property of the complainant and/or to the inmate of the house.

5 Thus after taking into consideration the fact that the applicant was the principal conspirator of the present crime and the gravity of the offence, I am not inclined to grant bail to the present applicant. The application is accordingly dismissed.

(A.S. GADKARI,J.)