IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 197 OF 2017

Amarsingh Nathu Wagh. ... Applicant.
Versus
The State of Maharashtra. ... Respondents.

Mr. Santosh G. Shirsat, advocate for Applicant.

Mr. Arfan Sait, APP for State.

Mr. R.A. Utekar, PI, V.P. Road Police Station.

CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 21, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 8/9/2016 in Crime No. 376 of 2016 registered at V.P. Road Police Station for offence punishable under sections 394, 397,452,120B read with

section 34 of the Indian Penal Code and 37(1)(A), 135 of the Maharashtra Police Act. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 5/9/2016 Mrs. Panna Rana, a resident of Kanbai chawl lodged a report at the police station that one Padmaben Pannalal Syania, who is about 75 years old resides in the same chawl. She is spinster. Since she resides alone, the first informant used to visit her quite often and cater to her needs whenever necessary. On 5/9/2016 the complainant was sitting in the varandah of chawl. She had seen 3 persons proceeding on the first floor. Initially the first informant presumed that since repairing work was going on, on the first floor, 3 persons may be mason engaged for the said repairing work and therefore, did not object. Soon thereafter, she heard the cries of Padmaben. Therefore, she rushed upstairs to rescue her. She saw that Padmaben was made to lie on the bed and one of the person was attempting to gag her mouth.

They had stolen ornaments adorned by Padmaben and fled from the spot. The first informant had raised hue and cry. People in the locality had gathered and nabbed one of the person, who had disclosed his name as Nitin Sonawane.

4 Mr. Nitin Sonawane was also being prosecuted for offence punishable under section 394 of the Indian Penal Code. It appears from the papers of investigation that the names of the co-accused were disclosed by Nitin Sonawane and hence, three persons were arrested namely, Sadanand Sawant, Rakesh Shah and the present applicant. The test identification parade was conducted. Sadanand Sawant and Rakesh Shah had been identified by the first informant. The present applicant was also subjected to test identification parade. However, he was not identified by the first informant.

5 The learned Counsel for the applicant submits that accused Sadanand Sawant has been enlarged on bail by the Sessions Court on

9/2/2017 and Rakesh Shah has been enlarged on bail on 3/3/2017. The application filed by the present applicant was rejected on 5/1/2017 and thereafter, the co-accused are enlarged on bail. Hence, according to the learned Counsel for the applicant, by virtue of doctrine of parity, the applicant also deserves to be enlarged on bail.

6 The learned APP fairly submits that as on today, there is no specific incriminating material against the applicant. According to the learned APP the name of the applicant was disclosed by Nitin Sonawane as one of his associates. That the applicant was standing guard to the room where all the three persons were attempting to steal ornaments adorned by Padmaben.

7 Be that as it may, taking into consideration the material collected in the course of investigation and the fact that co-accused who have been identified in the test identification parade are enlarged on bail, the applicant also deserves to be enlarged on bail.

8 However, the observations are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of trial.

9 Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more local solvent sureties in the like amount.

(iii) The applicant shall report to the concerned police station on 1st and 3rd Sunday of each month till framing of charge.

(iv) The applicant shall not leave Mumbai, Thane and Palghar without permission of the Court.

(v) The applicant shall not tamper with the evidence.

10 At this stage, the learned Counsel for the applicant prays for provisional cash bail. The prayer is granted. The applicant be enlarged on provisional cash bail in the sum of Rs. 25,000/- for a period of 4 weeks during which he shall furnish local solvent sureties to the satisfaction of the trial court.

11 The application stands disposed of accordingly.

(**SMT. SADHANA S. JADHAV, J)**