

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.395 OF 2017

Mohammed Hanif Gulam Hussain Pathan .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.R.L.Majgaonkar, Advocate, for the Applicant
Mr.S.H.Yadav, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 28.04.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-135 of 2016 registered with the NRI Police Station, District – Raigad, for the alleged offences punishable under Sections 342, 364A, 384, 387, 170, 323, 504, 506 r/w. 34 of the Indian Penal Code (For short “IPC”).

3. Learned counsel for the Applicant seeks bail on the ground of parity. He submits that similarly placed co-accused have been enlarged on bail by this Court and by the Sessions

Court. He submits that the only allegation in the complaint is that the Applicant took the Complainant's mobile, purse, money and key and forced him to sit in the jeep. He submitted that there is no recovery at the instance of the Applicant and the Applicant does not have any antecedents. He further submitted that even otherwise, no evidence whatsoever is disclosed qua the Applicant under Section 364A of the IPC in the facts of the case.

4. Learned APP does not dispute the fact that similarly placed co-accused have been enlarged on bail by this Court and by the Sessions Court.

5. Perused the papers.

6. The complainant is running a Company by the name "Ocean King Ship Management Private Limited" in Sector 25, Seawoods, Navi Mumbai. The complainant's friend-Sunil Gaund was also doing the business of recruitment for shipping companies, in the name of 'Sea Pacific Private Limited'. The said office 'Sea Pacific Pvt. Ltd.' was at CBD, Belapur. It appears that the partners of 'Sea Pacific Private Limited' were Sunil Gaund, Ankit Singh and others. It also appears that Sunil Gaund was

also a director of another shipping company, by the name 'M/s. Bombay Offshore & Shipping Management Private Limited'. According to the complainant, Sunil Gaund was called to the APMC Police Station on 08.06.2016 in connection with an offence punishable under Section 420 of the Code of Criminal Procedure which was registered against him. Pursuant thereto, the complainant visited the APMC Police Station on 08.06.2016. He has stated that the APMC police had called him on the next date i. e. 09.06.2016 at 10.30 a.m. to Sunil Gaund's office. He has stated that he went to the office on the next date and the police completed the formalities. He has further stated that during that time, the Nerul police had come to the office of Sunil Gaund as an FIR was registered as against an employee of the office Vinay Singh. The said FIR was lodged by an employee of Sunil Gaund, alleging an offence punishable under Section 354 of the Indian Penal Code. He has stated that when the police were making enquiries in connection with the said offence lodged by the lady against Vinay Singh, Ankit and three unknown persons came to the office and questioned him, whether he was threatening the lady. He has stated that the said persons abused and threatened him. He has further stated that he turned a blind eye to the said abuses and left the place along with his friends Aslam and Manoj

in an Innova car for Ulwe, Navi Mumbai. He has stated that when he reached Ulwe, Sector 9, he had lunch with Aslam and Manoj in a hotel and that thereafter, Ankit and three unknown persons reached the said hotel and sat on a table, adjacent to theirs. He has stated that one of the said persons stated that he was from the Crime branch and questioned whether he was standing surety for Vinay Singh and stated that they would implicate him in a cheating case. According to the complainant, he apologized to the said persons and stated that he would not interfere in Vinay Singh's matter. He has further stated that after they left the hotel, the said persons asked him to sit him in his car and that one of the persons i. e. Applicant took his mobile, purse and key and forced him to sit in the jeep. He has stated that he felt that the said persons were police and accordingly, sat in the vehicle. He has stated that after he sat in the vehicle, the said persons assaulted him, threatened him & made him sit in the car and took him to the Nerul Police Station. He has stated that thereafter, he was taken to Sunil Gaund's office where two ladies and one gent was present. He has stated that they took him to the cabin and questioned him why he was interfering in Vinay Singh's matter. He has stated that thereafter, at around 6.30 p.m. in the evening, they took him in a car and went near the

Nerul Police Station. He has stated that co-accused Shirke got down from the vehicle and went to Nerul Police Station. He has further stated that after an hour, Shirke returned back to the car and demanded Rs.2,00,000/- for settling the matter. Thereafter, they asked him to arrange for the money. At around 1.30 a.m. Pathan Major and Ankit are stated to have got down from the car at Belapur and co-accused Shirke is stated to have taken him to his residence. According to the complainant, when he reached his residence, out of fear and because of the threats, he handed over a sum of Rs.1,20,000/- to co-accused Shirke. Although, the complainant has alleged that he was assaulted by the accused, no Injury Certificate has been placed on record. In fact, even the statements of the complainant's acquaintances Aslam and Manoj with whom he left and had lunch on 09.06.2016, their statements have not been recorded. The statement of Sou. Sakshi Jadhav shows that the complainant had gone to the office on 09.06.2016 and had asked her whether she would withdraw the complaint lodged by her for the offence punishable under Section 354 of the Indian Penal Code. She has stated that co-accused Shirke told the complainant why he was threatening her and asked him not to interfere in the matter. He has stated that thereafter, the complainant left the office and after some time

returned back with the Applicant and co-accused Shirke and that they sat in the office and were discussing something.

7. It appears that the only allegation as against the Applicant is that he compelled the Complainant to sit in the jeep and took away his mobile, purse, money and key. It is not in dispute that similarly placed co-accused have been enlarged on bail by this Court and by the Sessions Court. There is no recovery at the instance of the Applicant. The Applicant has no antecedents. Investigation is complete and charge-sheet is filed.

8. Considering the aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

O R D E R

(i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;

(ii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iii) The Applicant shall inform his latest place of

residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)