

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

CRIMINAL BAIL APPLICATION NO.1130 OF 2017

Mr. Devidas Raghunath Ghode	..Applicant
Versus	
State of Maharashtra	..Respondent

Mr. Sandeep Mishra for the Applicant.

Mr. S. H. Yadav, APP for the Respondent.

**CORAM : T. V. NALAWADE, J.
DATE : 24th AUGUST 2017**

PC.

1 The application is filed for bail in C. R. No.I-226 of 2016 registered with Khandeshwar Police Station, Navi Mumbai for offence punishable under Section 395 of the Indian Penal Code. Charge-sheet is also filed in the said crime and present Applicant, one API is shown as the main accused in the case.

2 Both the sides are heard.

3 Papers of investigation were made available for perusal of this Court.

4 The crime was registered on the basis of report given by one Mr. Gautam Pokhraj Bafna. He is a businessman. According to him due to

nature of business, he was required to keep huge cash amount with him and so he was having cash amount of Rs.85,00,000/- with him. The demonetization was declared on 08.11.2016 and the currency notes of Rs.1000/- Rs.500/- denomination which were in use, were cancelled. The persons who were having such notes were expected to return these currency notes before 31.12.2016 by depositing them in the banks. However, there was restriction on the deposit of the amount and also the withdrawal of the amount. After depositing such amount, record was created as per the directions in that regard. Many businessmen were in trouble due to this policy.

5 Complainant – Mr. Gautam Bafna knew persons like Akthar and Anwar. According to him, on 09.11.2016 i.e. on the next day of the decision of demonetization, Anwar contacted him and he said that he was in a position to exchange the old currency notes which were cancelled with new notes and one person was having a deal for that. Mr. Gautam Banfa decided to go for the deal and get changed the currency notes of the total value of Rs.50,00,000/-. On 11.11.2016, Anwar contacted Mr. Gautam Bafna and asked him to come Grant Road. Mr. Gautam Bafna told him he cannot come to Grant Road. Mr. Gautam Bafna was called to New Panvel. Mr. Gautam Bafna and his friends Kishor Shah and Manish started with this cash amount in their car. As per the

instructions given they went New Panvel, Sector 10. There Anwar came to their car with one person and asked Mr. Gautam Bafna to show the currency notes. Mr. Gautam Bafna opened the bag and showed few bundle and containing the amount of Rs.3,50,000/- and said person contacted other persons on mobile phone and asked the person to come to the spot. The said person stayed near the car of the Mr. Gautam Bafna and Anwar went away.

6 At about 11.15 p.m. when Mr. Gautam Bafna was waiting there, one Swift Desire car of Maruti company came there and four persons alighted from that car. This car belongs to present Applicant. Applicant was working as API and he was posted in the office of Commissioner. He had no jurisdiction over that area to take action.

7 Present Applicant questioned Mr. Gautam Bafna as to why he was there and then asked Mr. Gautam Bafna as to whether he had come to change black money of Rs.1 crore to make it white. The person who was waiting near car and who was brought by Anwar joined the four persons who had come in Swift Desire car. These persons started taking search of the car. When Mr. Gautam Bafna and his friends asked as to why they are doing such a thing they shouted at Mr. Gautam Bafna and his friends that they were police. After that, present Applicant said that

he was taking over the cash and seizing it. The present Applicant then asked as to where the remaining amount of Rs.50,00,000/- was !. Mr. Gautam Bafna informed that he was having an amount of Rs.50,00,000/-. Then the bag was taken over by present Applicant by virtually using force and then the five persons went away in the Swift Desire car of the present Applicant.

8 Mr. Gautam Bafna and his friends had not seen the present Applicant in the past but they had sufficient time and opportunity to see these persons and describe them. Mr. Gautam Bafna disclosed this incident to his partner Mr. Jagdish Vishnoi. As the nature of incident showed that Anwar had joined with the aforesaid persons, they contacted Anwar. Then Anwar informed that he was also made accused by police in the same incident. On 13.11.2016, Anwar received phone call from mobile which is noted and the said person gave his name as Inspector Ghode present Applicant. He asked Mr. Gautam Bafna to bring remaining cash amount of Rs.54,00,000/-. The Applicant informed to Mr. Gautam Bafna that he had already deposited the amount which was taken over by him on that night in the office. Mr. Gautam Bafna was asked to come to Commissioner's office at Belapur. Mr. Gautam Bafna avoided by saying that he will come afterwards. After sometime, present Applicant again asked Gautam and gave threat of arrest. Mr. Gautam Bafna then

consulted Mr. Jagdish Vishnoi. Present Applicant had contacted Akthar and the conversation of present Applicant was recorded, in which present Applicant had informed that he had deposited the aforesaid cash in the office as unclaimed money. Then more inquiry was made about the present Applicant and it was realised that he had no authority to take action and he had virtually committed the offence of decoity and he was trying to get more money by giving threat of arrest. Mr. Gautam Bafna then approached police and gave report on 02.12.2016.

9 During the course of investigation, police recovered the CCTV footage of camera installed in the vicinity of the place. The footage showed that after taking over of the cash, present Applicant had handed over the bag containing cash to Motha Anwar. Present Applicant was shown the CCTV footage and he admitted that he was there in the CCTV footage. Surprisingly, it was submitted by the learned counsel for the Applicant that, the time given in the CCTV footage does not match to the time given by the first informant. Apparently, there is no inconsistency and even if there is some inconsistency that is a matter of appreciation by Trial Court.

10 The material collected shows that all the persons had distributed aforesaid cash amount amongst themselves. Major chunk had

gone to the present Applicant. He had given some amount to some persons and as per his information those persons were traced and some amount already recovered. It can be said that the amount around Rs.8,00,000/- is recovered. However, remaining amount is not recovered. This circumstances say something about approach of the the investigation agency also. These days such incidents are increasing. The persons who are expected to protect public are virtually robbing public. The aforesaid material shows that the two acquaintances of Mr. Gautam Bafna had given information to the present Applicant and aforesaid incident was pre-planned by present Applicant. He wanted to grab that money and he also wanted to extract more money by giving threat of arrest. It can be said that for sometime Mr. Gautam Bafna did not take action due to apprehension that action can be taken against him by police. When he realised that present Applicant was trying to get more money and he was blackmailing, Mr. Gautam took the decision and he gave report.

11 The present Applicant cannot be released on bail as ordinarily due to policy of employer, Government, he is allowed to resume duty. Even when he is not on duty, due to contacts he can do anything. There is possibility of tampering with the witnesses if he is released on bail. The incidents of murder of the witnesses are also increasing. All these possibilities are there in the present matter. When

persons like Applicant are involved in the offences like present one, it is never desirable to grant him bail.

12 Learned counsel for the Applicant placed reliance on some observations made by the Hon'ble Apex Court in following two cases :-

- I) *The State of Rajasthan, Jaipur Vs. Balchand (AIR 1777 SC 2447)* and
- II) *Sajay Chandra and Ors. Vs. Central Bureau of Investigation (AIR 2012 SC 830)*.

The facts and circumstances of each and every case are always different. The peculiar facts in the present matter are quoted by this Court. Due to those facts, this Court holds that bail cannot be granted in the present matter. In the result, application is rejected.

[T. V. NALAWADE, J]