

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

CRIMINAL BAIL APPLICATION NO.1208 OF 2017

Baldevsingh Kulwantsingh Manaku	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr. A. H. Ponda i/b. Sanjukta Dey, Advocate for the Applicant.
Mr. A.R. Kapadnis, APP for the Respondent – State.
Mr. Arjun Drona, Advocate for the Complainant.

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**WITH
CRIMINAL BAIL APPLICATION NO.1209 OF 2017**

Jude John Romell	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr. A. P. Mundargi, Senior Advocate a/w. Mr. Abhishek Yende i/b.
Sanjukta Dey, Advocate for the Applicant.
Mr. A.R. Kapadnis, APP for the Respondent – State.
Mr. Arjun Drona, Advocate for the Complainant.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 14, 2017.

P.C. :

The applicants are seeking bail in connection with
C.R.No.174 of 2017, registered with Dahisar Police Station, for

the offences punishable under Sections 143, 144, 148, 397, 447, 323, 504 and 506(2) of the IPC as well as Section 37(i) and 135 of the Bombay Police Act. The First Information Report was lodged on 22nd April, 2017. Both the applicants were arrested on the same day and since then they are in custody.

2 The prosecution case is that the complainant and his family members are the owners of the property mentioned in the FIR. It is alleged that they are in possession of the said property. It is further alleged that on 22nd April, 2017, the complainant received an information from his watchman Shakil Ansari at about 7.00 a.m. that about 50 persons including the applicants and other unknown persons had entered into the said property. The said persons were allegedly armed with sticks, iron rods. etc. It is further alleged that the site supervisor Mr. Parag Patel was assaulted by the said persons and a golden chain as well as his wallet was snatched by the unknown persons. It is further alleged that at about 10.30 a.m. the complainant reached the said place and it was noticed that the accused were present at the scene of offence. It was also noted that they had put up a barricade and also displayed the boards at that place. It is further alleged that the accused including the applicants threatened the complainant

and asked him to leave the place. He was also manhandled by them and was pushed out from the said place. Thereafter, the witnesses Shakil Ansari and Parag Patel met him on the way and they have narrated the incident which had occurred at the earlier point of time. On the basis of the aforesaid facts, FIR was registered.

3 As stated above, the applicants were arrested on 22nd April, 2017. The applicant in Bail Application No.1209 of 2017 is a partner of M/s. Romell Housing LLP. After the arrest, the applicants were produced before the Court for remand on 23rd April, 2017. From the said remand application, it is apparent that about 36 persons including the applicants were arrested. They were produced before the Court for remand. The Magistrate before whom they were produced was pleased to remand accused to police till 25th April, 2017. They were again produced on 25th April, 2017. The police sought remand on the ground that interrogation of the applicants - accused who were arrested was necessary. The learned Magistrate was pleased to grant further police custody till 26nd April, 2017. Thereafter, on the next date of remand i.e. on 26th April, 2017 again the police custody was sought by the police. The grounds which were stipulated in the

remand application dated 26th April, 2017 were that the gold chain and the wallet which were snatched by the unknown person is yet to be recovered. It is also alleged that some documents and some cash is also required to be recovered. It was further stated that the generator which was lying at the place of incident is to be recovered. The learned Magistrate, however, refused to extend the police custody and remanded the applicants to judicial custody. While remanding the applicants and other accused, the Court had to observed that the police had arrested accused on 22nd April, 2017 and since then they were in police custody. It is further observed that nothing had been recovered from the accused. As per the arguments advanced by the prosecution, property is to be recovered from these accused and as per police report, the said property is not in possession of these applicants – accused. No purpose will be served by keeping these accused in further police custody and hence they were remanded to judicial custody.

4 The applicants and other accused thereafter preferred application for bail before the Magistrate. However, as far as the other accused other than the applicants are concerned, the say was filed that in case they are released on bail, stringent

conditions may be imposed on them. However, the application for bail preferred by applicants was opposed. The learned Magistrate rejected the said application by order dated 27th April, 2017 and, thereafter, the applicants preferred the application before the Sessions Court on 28th April, 2017. The application of these applicants were rejected by order dated 18th May, 2017. Hence, the applicants had approached this Court seeking bail.

5 It is the case of the applicant in criminal application no.1209 of 2017 that he is one of the designated partner and authorized signatory of M/s. Romell Housing LLP, who is the absolute owner and in possession of various properties situated at Village Dahisar, Taluka Borivali which includes the properties in question. Learned counsel for the applicant further contended that M/s. Romell Housing LLP was proposing to purchase the lands from its erstwhile owners M/s. Pooja Land & Premises Private Limited and M/s. Velentine Properties Private Limited, respectively. It was revealed that the original owners were not in physical possession of the lands in question, but, the same were in possession of one Kamruddin Shaikh. It is further stated that Kamruddin Shaikh prior to his death had executed an irrevocable General Power of Attorney in favour of his wife Mrs. Sultana

Kamruddin Shaikh. The said Kamruddin Shaikh executed a deed of assignment-cum-surrender of possessory title and physical possession dated 10th December, 2016 in favour of M/s. Romell Housing LLP in respect of the entire land totally admeasuring 67,886.80 square meters for a sum of Rs.60 lakhs. It is further stated that Kamruddin Shaikh acting thorough his wife and constituted attorney Smt. Sultana Shaikh executed four different instruments/Deeds in favour of M/s. Romell Housing LLP. The erstwhile owner M/s.Pooja Lands and Premises Pvt. Ltd. by two separate registered deed of conveyance from M/s. Romell Housing LLP purchased for an area admeasuring about 14,319 square meters and 11,039.70 square meters. The erstwhile owner M/s. Velentine Properties Pvt. Ltd. executed two separate registered deed of conveyance in favour of M/s. Romell Housing LLP for an area admeasuring 16,691.60 square metres and 13,501.40 square meters, respectively. Learned counsel for the applicants in both the applications submitted that they have been falsely implicated in the present case. The dispute is in relation to the property. They relied upon documents which are annexed to the applications which according to them show that M/s. Romell Housing LLP is the owner and is in possession of the property. It is further submitted that the offence publishable

under Section 397 of the IPC is not made out against the applicants. Mr. Mundargi, the learned Senior Advocate submitted that the documents on record establishes the claim of M/s. Romell Housing LLP. He submitted that further custody of applicant accused is not required. It is submitted that entire controversy involved in the dispute is of pure civil nature but solely with a view to help the complainant and his family members the criminal law has been set in motion by registering a false case against the applicant and others. It was submitted that the grandfather of the complainant and his wife/constituted attorney Mrs. Sultana Shaikh has executed Deeds and documents in favour of M/s. Romell, which documents have been duly stamped, clearly show that there is no iota of truth in the complaint of alleged criminal trespass and alleged forcible dispossession. Although it is alleged that site supervisor Parag Patel and Shakeel Ansari were assaulted, there is no medical report of their examination to substantiate the alleged assault.

6 Mr.Ponda, learned advocate appearing for the applicant in Bail Application No.1208 of 2017 submitted that he has been falsely implicated in this crime being associated with the applicant in other application. He submitted that Section 397

has been deliberately invoked to make the offence non-bailable. He submitted that a purely civil dispute has been converted into a criminal offence by involving Section 397 to detain the accused in custody. He submitted that the allegation of snatching the gold chain etc., were attributed to unknown persons. The prosecution has improved the case by imaginary theory of taking away cash. He placed reliance upon the decision of Hon'ble Supreme Court in the case of ***Dilawar Singh Vs. State of Delhi***¹. In paragraphs 19 and 20 of the said decision, it was observed as follows:

“19 The essential ingredients of Section 397 IPC are as follows:

- 1 Accused committed robbery.*
- 2 While committing robbery or dacoity (i) accused used deadly weapon (ii) to cause grievous hurt to any person (iii) attempted to cause death or grievous hurt to any person.*
- 3 "Offender" refers to only culprit who actually used deadly weapon. When only one has used the deadly weapon, others cannot be awarded the minimum punishment. It only envisages the individual liability and not any constructive liability. Section 397 IPC is attracted only*

¹ (2007) 12 SCC 641

against the particular accused who uses the deadly weapon or does any of the acts mentioned in the provision. But other accused are not vicariously liable under that Section for acts of co-accused.

20 *As noted by this court in **Phool Kumar v. Delhi Administration**², the term "offender" under Section 397 IPC is confined to the offender who uses any deadly weapon. Use of deadly weapon by one offender at the time of committing robbery cannot attract Section 397 IPC for the imposition of minimum punishment on another offender who had not used any deadly weapon. There is distinction between 'uses' as used in Section 397 IPC and 398 IPC. Section 397 IPC connotes something more than merely being armed with deadly weapon.*

7 Learned APP Mr. Kapadnis submitted that the applicant has committed serious offence. They had engaged a mob of about 50 persons in committing the crime. The co-accused were armed with sticks and iron rod. All of them had entered upon the subject property and dispossessed the owners of the property. He submitted that the stolen property is yet to be recovered. The applicants are not entitled to be released on bail.

2 AIR 1975 SC 905

8 Learned counsel for the intervenor-original complainant also reiterated the submissions made by the learned prosecutor. It was submitted that the accused has used force and had entered into the premises. The high handed manner in which the applicants - accused had committed the offence with the mob of about 50 people does not entitle them to be released on bail. He submitted that the accused had committed similar offence in the past. He submitted that the claim of applicants is false. This is not a civil Court to decide the rights of parties. He also explained the delay in lodging FIR.

9 Learned APP has submitted that as against applicant in Bail Application No.1209 of 2017 an offence has been registered with Vakola police station vide C.R.No.350 of 2014. It was also submitted that as far as applicant in Bail Application No.1208 of 2017, also a case was registered against him. However, Mr. Mundargi, learned Senior Advocate appearing for the applicant in Bail Application No.1209 of 2017 has pointed out the order granting bail to the applicant in that earlier case. In the said order, the learned Magistrate while granting bail had observed that initially the offence was registered under Sections 447 and 427 read with Section 34 of the IPC. The offence was

bailable and subsequently non bailable offence was involved hence, the accused were ordered to be released on bail. It was also pointed out that the complainant in that case had filed a suit which was also dismissed. As far as the applicant in Bail Application No.1208 of 2017, is concerned, Mr. Ponda, the learned advocate for the applicant had pointed that the earlier case has resulted into acquittal. He placed reliance upon the judgment of acquittal. Learned counsel for the intervenor had also pointed out that after the applicant was arrested, witnesses were threatened and, therefore, in that regard, NC complaint was registered with the concerned police station. The said submission was dealt with by the applicants stating that NC was against unknown persons and the applicants are in custody.

10 I have perused the FIR and the documents which are annexed to this application. After hearing the rival contentions of both the parties, I am of the opinion that the dispute had arisen on account of claim of the property. The applicants have relied on several documents with regards to the claim of M/s. Romell Housing LLP. However, I am of the opinion that this is not the forum to decide the right of parties. However, the only inference which can be drawn that the alleged incident had occurred on account of property dispute.

11 Admittedly, it is the case of the complainant that some unknown persons had snatched gold chain and wallet of one of the witness. The Court in remand application while refusing the police custody, had observed that nothing was recovered from the arrested accused. It was also observed that as per the police report, the property is not in the possession of the arrested accused and in the circumstances, no purpose will be served by keeping the accused in further police custody. In the light of the observations, it is evident that the question of continuing the custody of the applicant for the purpose of investigation does not arise. Offence admittedly had arisen on account of dispute relating to the property. The allegation *qua* the offence under Section 397 of IPC were attributed to the unknown persons. The applicants were remanded to police custody from 22nd April, 2017 to 26th April, 2017. The investigating authority were given sufficient time to interrogate the applicants and after learned Magistrate was satisfied that there was no need of further police custody, they were remanded to judicial custody. The applicants are in custody since 22nd April, 2017 and there is no valid reason to keep them in further custody.

12 Taking into consideration the aforesaid facts and circumstances and the submissions advanced by parties, I am inclined to allow these applications for bail on certain conditions.

13 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Bail Application Nos.1208 of 2017 and 1209 of 2017 are allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R.No.174 of 2017, registered with Dahisar Police Station, on executing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) each with one or two sureties in the like amount;
- (iii) The applicants are directed to attend Dahisar Police Station, once in a week on every Monday between 10.00 a.m. to 12.00 noon, till filling of the charge - sheet;

- (iv) The applicants shall not tamper with the prosecution witnesses and shall not indulge in threatening the witnesses;
- (v) Applicants are permitted to furnish cash security in the sum of Rs.50,000/- (Rupees Fifty Thousand) each for a period of six weeks. The applicants shall furnish the sureties as stipulated in clause (ii) of this order within six week;
- (vi) Criminal Bail Application Nos.1208 of 2017 and 1209 of 2017 stands disposed off.

(PRAKASH D. NAIK, J.)