

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

CRIMINAL BAIL APPLICATION NO.1293 OF 2017

Chetan Vijay Chayal .. Applicant

Vs.

State of Maharashtra .. Respondent

Mr.Amit A. Nalavade for the applicant.

Mr.S.H. Yadav, Additional Public Prosecutor for the respondent.

CORAM : T.V. NALAWADE, J.

DATE : 24th August 2017

P.C. :

. The application is filed for relief of bail in C.R. No.226 of 2016 registered with Khandeshwar Police Station for the offence punishable under Sections 395 of the Indian Penal Code. It can be said that the provision of Section 120B of the Indian Penal Code is also applicable in the present matter. Both the sides are heard.

2. As charge sheet is filed, papers of investigation were made available for perusal of this Court. Today, this Court has rejected the Bail Application No.1130 of 2017 of Mr.Devidas Raghunath Ghode who is brain behind the offence.

3. While rejecting the application of Ghode, this Court has considered the material collected by the police which is as under :-

(i) 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.

(ii) 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 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.

(iii) 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 Ghode. Ghode was working as API and he was posted in the office of Commissioner. He had no jurisdiction over that area to take action.

(iv) Ghode 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, Ghode said that he was taking over the cash and seizing it. The Ghode 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 Ghode by virtually using force and then the five persons went away in the Swift Desire car of the Ghode.

(v) Mr. Gautam Bafna and his friends had not seen Ghode 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 Ghode. He asked Mr. Gautam Bafna to bring remaining cash amount of Rs.54,00,000/-. The Ghode 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, Ghode again asked Gautam and gave threat of arrest. Mr. Gautam Bafna then consulted Mr. Jagdish Vishnoi. Ghode had contacted Akthar and the conversation of Ghode was recorded, in which Ghode had informed that he had deposited the aforesaid cash in the office as unclaimed money. Then more inquiry was made about the Ghode 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.

(vi) 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, Ghode had handed over the bag containing cash to Motha Anwar. Ghode 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 Ghode 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.

(vii) The material collected shows that all the persons had distributed

aforesaid cash amount amongst themselves. Major chunk had gone to the Ghode. 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 Ghode and aforesaid incident was pre-planned by Ghode. 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 Ghode was trying to get more money and he was blackmailing, Mr. Gautam took the decision and he gave report.

4. The aforesaid material show that the present applicant played active part in the incident. He helped Ghode in search the car and he helped Ghode in virtually snatching the bag containing cash amount. There is material that on both the occasions, while committing the offence of dacoity and while handing over the cash amount to Motha Anwar the present applicant was present.

5. There is one more circumstance that the applicant got his share in the cash amount lotted by police. That cash amount is recovered on the statement given by the present applicant.

6. Learned counsel for the applicant placed reliance on the decision of the Apex Court in the case of ***The State of Rajasthan, Jaipur Vs. Balchand (AIR 1777 SC 2447)*** and in the case of ***Sajay Chandra and Ors. Vs. Central Bureau of Investigation (AIR 2012 SC 830)***. They are not used in the present matter.

7. Learned counsel for the applicant submitted that this Court has granted bail to one constable who was with Ghode and on the ground of parity, the application of the present applicant needs to be allowed. This Court is avoiding to observe with regard to the said order. There is material of aforesaid nature against the present applicant. He was a part of conspiracy right from the beginning and it cannot be said that he was acting under pressure of Ghode. In Mumbai, it is noticed that such rackets/gangs are formed by some police officers and there are some other members of those rackets. The other persons help in disposal or investment. It is very unfortunate that the persons like Ghode are lotting the public by using post. The persons who are lotted by the such police are the business men. Applicant, a businessman helped the public servants and probably in concealing the money also. The persons who are helping the public servants in such offence need to realise that their cases cannot be considered on different footings. This Court has already observed that Ghode can tamper with the prosecution witnesses. Being a man of Ghode and having resources, the present applicant can also tamper with the prosecution witnesses. In such cases, there is danger to the life of the prosecution witnesses. The first duty of the Court in such case is to protect the life of the witnesses. In this country, there is no separate mechanism to protect witnesses and so accused persons need to

be kept behind bars. This Court holds that it is not a fit case to grant bail to the present applicant. In the result, the application stands rejected.

T.V. NALAWAE, J.