

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2214 OF 2016

Mr. Ashphaque Munir Sayyed Applicant/Accused

Versus

State of Maharashtra Respondent
through Shanti Nagar Police Station.

Mr. M.K.Kocharekar for Applicant/Accused.

Mr. Ajay Patil, APP for Respondent/State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 17TH JANUARY, 2017.

P.C.

. Heard. This is an application under section 439 of the Code of Criminal Procedure. The applicant herein is arrested on 14th June 2016 in Crime No. I-181 of 2016 registered at Shanti Nagar Police Station, Bhiwandi for the offences punishable under Sections 395, 323, 504, 506, 34 of Indian Penal Code. The investigation is completed and charge sheet is filed.

2. It is the case of the prosecution that on 14th June 2016 Anil Hussain Shaikh lodged a report to the Police Station alleging therein that on 11th June, 2016 at about 20.30 hrs. he was answering nature's call by the road side. At the relevant time, six

unknown persons got down from Auto Rickshaw. They have objected his act. Thereafter they had checked his pockets, abused him, assaulted him with fist and kick blows and then they have taken away his cell phone, the golden chain and cash of Rs. 6900/-. Within few hours of lodging of report, the applicant was arrested by the police. There is a recovery of the golden chain and the cell phone from the applicant. There is also a recovery of cash.

3. The learned counsel for the applicant submits that there is a delay of four days in lodging FIR. That the applicant has been arrested on the basis of suspicion. It is also submitted that within few hours of lodging of the FIR, the police had apprehended the present applicant. It is also submitted that a recovery is foisted upon the applicant. The learned APP submits that the applicant is also being prosecuted for the offence punishable under Section 307 of Indian Penal Code and does not deserve to be enlarged on bail.

4. Admittedly, there is a delay of four days in lodging FIR. There is no plausible explanation for an inordinate delay. The applicant is not being prosecuted under Section 379 or 395 of Indian Penal Code in any other case. The applicant has been in a custody for almost seven months. Charge sheet is filed. Hence, the applicant deserves to be enlarged on bail.

5. It is made clear that the co-accused shall not claim parity with the present applicant. The observations are restricted to an

application under Section 439 of CR.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) The applicant be enlarged on bail on furnishing PR bond in the sum of Rs 25,000/- with one or more local solvent sureties.
- (iii) The applicant shall attend to Shanti Nagar Police Station, Bhiwandi on 1st and 3rd Sunday of each month till the framing of charge.
- (iv) The applicant shall furnish his permanent address, cell phone number and other relevant material to the investigating agency.

(SMT. SADHANA S. JADHAV, J.)