

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2275 OF 2016

Imran Ali Mohammed Shaikh

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Momin Farooque Nisar Advocate for Applicant.

Ms. J. S. Lohakare APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 15th MARCH, 2017.

PC :

1) 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 at the relevant time six unknown persons alighted from the auto rickshaw. They had accosted the first

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informant on the ground that he is not permitted to answer nature's call on the roadside. The first informant was abused, assaulted with fist and kick blows. He was robbed of his cellphone, golden chain adorned by him and cash of Rs. 6,900/- (Rs. Six Thousand Nine Hundred). Accused Ashphaque Munir Sayyed was arrested by the police within few hours of lodging of the F.I.R. the golden chain and cellphone and cash was recovered under section 27 of the Indian Evidence Act.

3) The learned APP, upon instructions, fairly submits that there are no criminal antecedents. That there is recovery of an auto rickshaw at the instance of the present applicant and therefore, he does not deserve to be enlarged on bail. It appears from the records that the first information report was lodged after four days of the incident. There is no plausible explanation for the inordinate delay in lodging the F.I.R. It further appears that in the F.I.R. the complainant had given the registration number of the auto rickshaw in which the accused had come to the spot. In fact, accused could have been traced upon inquiry about the ownership and the driver of the auto rickshaw from the R.T.O. Authorities, however, no efforts are taken by the investigating

agency and the rickshaw is shown to be recovered at the instance of the present applicant.

4) *Prima facie* it cannot be considered as an incriminating material. Co-accused Ashphaque Sayyed has been enlarged on bail by this Court on 17/01/2017. Investigation is completed and charge-sheet is filed. Applicant is not being prosecuted under section 379 or 395 of the Indian Penal Code. By virtue of doctrine of parity also, the applicant deserves to be enlarged on bail. In the peculiar facts and circumstances of this case, applicant deserves to be enlarged on bail.

ORDER

- (i) Application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more local solvent sureties in the like amount.
- (iii) The applicant shall attend Shanti Nagar Police Station, Bhiwandi on first and third 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.

(v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)