

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

BAIL APPLICATION NO.2434 OF 2016

Ubed Alam @ Babbar Habibul
Rehaman Shaikh

.... Applicant

versus

State of Maharashtra

... Respondent

Mr.P.R. Arjunwadkar, Advocate for the Applicant.
Mr.Y.M. Nakhwa, APP for the State/Respondent.

**CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 25th JANUARY, 2017.**

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under section 328, 379 r/w 34 of the Indian Penal Code in C.R.No.120/15 of Lohmarg Police Station, Solapur.

2. One One Shantanu Rajendra Kundur, boarded Haiderabad Hussainsagar Express to go to Mumbai on 17/10/2015. When the train reached at Solapur at around 09.30

p.m. an unknown person who was sitting on the front berth offered him a cold drink and therefore he had it. After some time he slept and at around 04.55 a.m. when he got up, the train had arrived at C.S.T. he felt like vomiting and unwell. He realized that his gold chain and cell phone and his two new shirts and one new jeans were missing. His relative had come to railway station to receive him and when the complainant narrated the incident to the relative, he took the complainant to the hospital. After treatment he recovered and then he gave information to police. Pursuant to which the offence was registered, the applicant/accused was arrested on 01/04/2016 in C.R.No.38/16 and was transferred in the present offence on 06/04/2016. Hence this bail application.

3. The learned counsel for the applicant/accused submitted that there is no evidence against the applicant/accused in the present case. The police have implicated him in some 5-6 cases of theft of similar nature and therefore he is detained. His bail application was rejected by the

Sessions Court. The learned counsel for the applicant/accused submitted that he is innocent and has not committed any offence.

4. The learned prosecutor opposed the bail application. He submitted that the applicant/accused has committed offence alongwith co-accused and the present accused has criminal record. Five cases u/s 379 and 328 of the Indian Penal Code are registered against him and the co-accused. He further submitted that the police have recovered gold from accused No.1 and have recovered the powder from accused No.3, when he was arrested. He has no permanent address. Therefore he should not be granted bail.
5. Perused the FIR and the panchanama and the statement. It appears from the record that five cases are pending against the applicant/accused of the similar offence i.e. administering stupefying drug on a person and thereafter committing theft of belongings of that person. It appears that

such offences are committed in the train at the railway station. However, while dealing with bail application Court has to first consider the role of the applicant/accused in the case in hand and thereafter the weightage will be given to the criminal antecedent of the applicant/accused. In the present case it was necessary for the prosecution to show that the complainant has identified the applicant/accused. However, no test identification parade was conducted. There is no recovery of any article at the instance of applicant/accused. It is a short case of theft. However, prima facie, there is no such evidence for which the custody of the applicant can be justified. In view of this, I grant bail on following terms and conditions:

ORDER

- (i) Application is allowed.
- (ii) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two local sureties in the like amount.

- (iii) The applicant shall leave phone and address and also photocopy of his identity proof with the police station.
- (iv) The applicant/accused shall not tamper with the evidence or pressurize the complainant.
- (v) The applicant/accused shall not commit any offence of similar nature.
- (vi) The applicant/accused shall not jump the bail and shall attend all the dates in the Court.

6. . The application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)