

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.3 OF 2017
(Shubham s/o Anil Tete vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri J.M. Gandhi, Advocate for applicant.
Shri A.V. Palshikar, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : JANUARY 05, 2017

Heard learned Counsel for both sides.

This is an application for bail by accused
Shubham involved in Crime No. 371/2016 registered
under Section 395 of Indian Penal Code.

Shri Gandhi, learned Counsel for applicant,
submits that according to report, involvement is of one
white coloured Car wherein six persons, aged about 20-
30 years, came in front of complainant's Truck and on
the point of knife, they looted amount of Rs.5000/- from
Truck Driver/complainant. By referring to reply filed
before learned Sessions Court, learned Counsel has
pointed out that Car mentioned therein is "red Indica
Car.

From the reply filed by learned Additional
Public Prosecutor on record, there is no mention of
colour of Car, but its make as Indica Car is mentioned. It
is material to note that in the report, there is no make of
Car mentioned, but its colour only is mentioned.

According to the case of prosecution, in the statement of second Driver Gangadhar Patel, who was with the complainant at the material time, Car make as well as its colour are mentioned.

It is difficult to accept the case of prosecution as aforesaid as according to report, complainant as well as second Driver Gangadhar Patel were occupying the Truck at the material time and thus, each has stated in respect of Car, but its make creates doubt in the case of prosecution from inception of report itself. Admittedly, there is no recovery of any amount effected from applicant except red coloured Indica Car, which is owned by applicant.

Considering the facts as aforesaid, though prosecution has opposed the application on the ground of test identification parade, which is yet to be conducted, by contending that complainant, who is resident of Tamil Nadu, is not available for the same, this by itself cannot be a ground to reject the application in the absence of prima facie evidence against applicant. Even otherwise, there is no physical description of accused mentioned in the report by complainant except stating approximate age of accused. In that view of the matter, the application is liable to be allowed as per order below :

The applicant shall be released on bail in Crime No.371/2016 on his executing a P.R. bond in the sum of Rs.20,000/- with one surety in like amount. Applicant shall mark his presence with Police Station, Hingna, District Nagpur till filing of charge-sheet and

thereafter once in six months pending trial. The criminal application is accordingly allowed.

JUDGE

khj