

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 124 OF 2018**

Mr. Nishant Moiz Ahmed Shami
V/s.

... Applicant

The Senior Inspector of Police,
D.N. Nagar Police Station & Anr.

... Respondents

Mr. Rizwan Merchant a/w Swapnil Wagh i/b Rizwan Merchant & Asso. for the Applicant.

Mr. R.M. Pethe, APP for the Respondent/State.

PI Bhalerao Shekhar, attached to D. N. Nagar Police Station.

CORAM : A.S.GADKARI, J.

DATE : 07th FEBRUARY, 2018

P.C.:

. This is an application under Section 439 of Cr.P.C. for bail in C.R. No. 538 of 2017 dated 22.12.2017 registered with Oshiwara Police Station, Mumbai under Sections 384 and 420 read with Section 34 of the Indian Penal Code.

2 The first information report is lodged by Smt. Megha Sood. It is stated that the girl friend of one Mr. Kartik who is friend of the husband of the first informant committed suicide on 02.04.2017 at Mumbai. That, the Applicant along with co-accused Mr. Tahir Baig gave intimation to her about it. It is stated that co-accused Tahir Baig thereafter, informed the informant that the Investigating Officer of the present crime is Shri. Rajane and the said Investigating Officer has informed him that at the scene of offence a diary was found and it is mentioned therein that Kartik has abetted the same crime. It was further informed to her by Tahir Baig that, husband of first informant namely Mr.

Amit is also co-accused in the said crime and police are going to initiate action against him under the Indian Penal Code. It is further stated that Mr. Tahir Baig therefore, demanded sum of Rs.10,00,000/- to be given to the Investigating Officer for deleting the name of her husband from the proceedings. It is stated that on 03.04.2017, she gave a bag containing Rs.10,00,000/- in the hands of the Tahir Baig when the Applicant also accompanied him. That, co-accused Mr. Tahir Baig thereafter went inside the Police Station and after some time came back and informed the first informant that he gave Rs.5,00,000/- to the Investigating Officer and balance Rs.5,00,000/- are directed to be kept by him in his custody. After 10 to 15 days, when the first informant had been to the Police Station for recording the statement, it was informed to her by Investigating Officer Mr. Rajane that the involvement of her husband is not found in the said crime. The first informant therefore, realised that co-accused Mr. Tahir Baig and Applicant had induced her to part with Rs.10,00,000/- under the pretext of paying the same to Inspector Mr. Rajane. It is further stated that in June 2017, co-accused Tahir Baig and Applicant returned a sum of Rs.4,38,000/- to the first informant. In the premise, the first information report is lodged.

3 The Investigating Agency has applied Section 384 of the Indian Penal Code to the present crime. Prima facie, it appears that, the application of the said Section to the present crime is misplaced as the case is based on false representation and inducement to first informant to part with the said amount.

4 The learned Magistrate while remanding the Applicant to Judicial Custody on the first date of remand, in its order dated 28.12.2017 has observed that the police custody of Applicant cannot be extended further as nothing has to be recovered from him. The record of investigation indicates that the investigation of the present crime is practically on the verge of completion.

5 Taking into consideration the peculiar facts of the present case, the Applicant can be released on bail.

Hence, the following order:

a) The applicant be released on bail in C.R. No. 538 of 2017 dated 22.12.2017 registered with Oshiwara Police Station, Mumbai on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

b) After his release from jail, the applicant shall attend the Investigating Officer on every Monday between 10.00 a.m. to 1.00 p.m. and to attend the process of investigation till the submission of final report. After filing of final report the Applicant shall attend the concerned Police Station on every first Monday of the month between 10 a.m. to 12 noon till conclusion of trial.

c) The applicant shall also attend all the dates before the Trial Court.

d) The Applicant shall not tamper with the evidence and/or pressurize or threaten the prosecution witnesses.

e) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)