

CRIMINAL BAIL APPLICATION NO.364 OF 2018

versus

The State of Maharashtra Respondent

CORAM : PRAKASH D. NAIK, J.
DATE : 1st October 2018

1. The applicant is seeking bail in connection with CR No.330 of 2016 registered with Azad Maidan Police Station, Mumbai for offences under Sections 342, 395, 397, 452, 120(b) of Indian Penal Code read with Sections 3 and 25 of Arms Act and Sections 37(1)(a) and 135 of Maharashtra Police Act.

2. The prosecution case is that first informant is dealing with stock market. The office is situated at Dhobi Talao, Mumbai. Cash transactions used to take place in his office. On 4-10-2014, at about 7.40 p.m; four unknown persons had entered into his office with pistol and knife. They forcibly looted cash of Rs.75,00,000/- and four mobile phones worth Rs.39,700/- and ran away from the scene of offence. The FIR was lodged against the unknown persons. The investigation proceeded. Several accused were arrested. The applicant is arrested on 16-10-2016. The investigation is completed and charge sheet has been filed.

3. Learned counsel for applicant who is appointed as amicus curiae submitted at the outset that the applicant is entitled for grant of bail on ground of parity. It is submitted that the co-accused Modsingh Rajput (accused no.3) has been granted bail by this Court vide Bail Application No.215 of 2016 by order dated 10-7-2018. It is submitted that other accused Aakashkumar @ Raju Yadav has also been granted bail by this Court vide Bail Application No.1320 of 2018 by order dated 10-9-2018. The Court while granting bail to the said accused had observed that the said accused was not identified in test identification parade. However, cash amount of Rs.3,59,000/- was deposited in his account. The prosecuting agency could not established the link between the said amount and the cash looted by the accused in the said crime. As far as recovery of cash of Rs.1,00,000/- from the house of said accused is concerned, there are no identity marks on the currency from which it can be discerned that the said cash was part and parcel of the proceedings of present crime. It was also observed that CDR of the mobile phone of the said accused showing his presence at the scene of offence, cannot be termed as conclusive proof of complicity at this stage. The CCTV footage depicting that the said accused was seen with a bag in his hand outside the office of first informant and leaving the place, is the only a circumstance against said accused. The Court also took into consideration that the accused was arrested on 16-10-2016 and charge sheet is filed. The co-accused Kishore Gehlot was granted bail by Sessions Court. Learned counsel for applicant submitted that except applicant and one another accused whose application is pending in this Court, all other accused are released on bail.

4. Learned advocate for applicant submitted that the applicant has been allegedly identified in the test identification parade. However, no reliance can be placed on such parade. The test identification parade was conducted after a period of three months after his arrest. He further submitted that after the identification, statement of witness who identified, has not been recorded by police. In the absence of such statement, there is nothing on record to indicate the alleged role played by the applicant while committing the crime. It is submitted that accused Akashkumar Yadav was also identified. The accused from whom there was recovery of money were granted bail. It is further submitted that recovery is also defective. Other person against whom there was recovery has been granted by this Court. There is no concrete evidence to link the alleged recovered amount with the amount which was allegedly looted by the accused. It is further submitted that the prosecution has alleged recovery of knife from the applicant. However, from the evidence on record it is apparent that a knife was already recovered and there is no theory of two knives being used in the commission of offence. He also relied upon in support of his submissions the judgment of Supreme Court in case of Shabad Pulla Reddy and others Vs. State of Andhra Pradesh (1997)8-SCC-496, the order granting bail in Criminal Bail Application No.569 of 2016 and Criminal Bail Application No.2233 of 2016. The said orders relates to the infirmities in conducting the identification parade and delay in conducting the parade. It is submitted that the applicant is in custody from 16-10-2017 and his further detention is not necessary.

5. Per contra, learned APP submitted that there is sufficient evidence against applicant. He was involved in the crime. The

accused have committed dacoity and looted the informant of huge amount. He has been identified by the complainant. There is recovery of cash amount of Rs.11,50,000/- from the applicant. There is also recovery of knife and office files from him and CDR record also indicates his presence in the vicinity of crime. It is further submitted that balance amount is yet to be recovered. Learned APP submitted that the applicant is a labourer and he could not explain as to from where the cash amount was collected by him which was recovered at his instance.

6. Having heard both the sides, I have gone through the documents on record. The applicant is in custody from 16-10-2016. On completing investigation, the charge sheet is filed. The evidence does not indicate that the accused had used two knives in the commission of crime. The witness has referred to knife being used by one accused and that knife has already been recovered. The recovery of knife from applicant is, therefore, doubtful. The applicant was identified, however, the test identification parade was conducted after three months from the date of his arrest. The investigating officer has not recorded the statement pursuant to the parade and therefore there is no indication as to what role was played by the applicant while committing the crime. There is alleged recovery of Rs.11,50,000/- from the applicant. The prosecution case is that the amount was shared by the accused and other accused has parted the amount to present applicant which was recovered his instance. It is relevant to note that the co-accused against whom there was recovery of money, has been granted bail. This Court had observed that link between the looted amount and the recovered amount is not established. The advocate for applicant also pointed

out the discrepancies in the recovery. Most of the accused are granted bail. In the circumstances and considering the ratio of various decisions relied upon by learned amicus curiae, case for grant of bail is made out.

7. The Court appreciates the assistance rendered by the learned amicus curiae and learned advocate appointed by Legal Aid Cell. The arguing counsel also placed on record written submissions along with compilation of documents and competently argued the matter.

8. Hence, I pass following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with CR No.330 of 2016 registered with Azad Maidan Police Station, Mumbai, on furnishing PR bond in the sum of Rs.25,000/- with one or more local solvent sureties;
- (ii) The applicant shall furnish documents relating to his residence to the investigating officer after his release;
- (iii) The applicant shall attend Azad Maidan Police Station, Mumbai once in a month on every first Monday between 11 am and 1 pm;
- (iv) The applicant shall not tamper with evidence;
- (v) The applicant shall diligently attend the dates of hearing before the Trial Court, unless exempted for some reason;
- (vi) Criminal Bail Application No.364 of 2018 is allowed and disposed off.

(PRAKASH D. NAIK, J.)