

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1230 OF 2018

Akashkumar @ Raju Suryabali Yadav,
Age 29 years, Occ.Service,
R/o.Gram Ramnagar Block,
Police Station Nevadia, Dist.Jaunpur,
Uttar Pradesh (presently in Judicial Custody
at Mumbai Central Prison).

Applicant

versus

The State of Maharashtra

Respondent

Mr.Nitin Sejpal with Pooja Sejpal and Akshata Desai for applicant.
Mr.A.R.Kapadnis, APP, for State.
Mr.S.R.Padvi, API, Azad Maidan Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th September 2018

PC :

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

2. The prosecution case is that the first informant is dealing with stock market. His office is situated at Dhobi Talao, Mumbai. Cash transactions used to take place in his office. On 4th October 2014, at about 7.30 p.m; four unknown persons had entered in his office with pistol and knife. They forcibly took cash of Rs.75,39,700/- and ran away from the scene of offence. The FIR was lodged against

unknown persons. The investigation proceeded. Several accused were arrested.

3. Learned counsel for applicant submitted that the accused who are similarly placed are granted bail. It is further submitted that test identification parade was conducted after filing of charge sheet. The applicant was arrested on 26th November 2016. The identification parade was conducted on 23rd January 2017 and prior to that the charge sheet was filed on 5th January 2017. It is further submitted that the applicant was produced before the remand Court after his arrest. On the first date, he was produced under veil but thereafter he was produced from time to time without veil and was remanded to judicial custody. Therefore, identification is under doubts. It is submitted that there is no recovery of amount from the applicant. The persons from whom the amount was recovered have been granted bail. It is submitted that one of the co-accused was also identified in the test identification parade. He was also granted bail. Substantial amount of Rs.5 lakh was recovered at the instance of co-accused Shravankumar Purohit who is granted bail by the Sessions Court. It is submitted that the applicant is in custody since 26th November 2016 and the trial has not yet started. It is submitted that further detention of the applicant is not necessary.

4. Learned APP submitted that the applicant was involved in the crime. He is the main accused. He is allegedly handed over the pistol to the co-accused. The mobile phone has been recovered from him. The CDR indicate that he was in connection with other accused who were involved in the crime. He is also in the vicinity of crime. The co-accused who were granted bail, were not identified in the

parade. The applicant is the resident of Uttar Pradesh. Huge amount was involved in this case. The entire amount is not recovered by police. Hence, it is prayed that the application may be rejected.

5. I have perused the documents. The alleged incident had occurred on 4th October 2016. The applicant was arrested on 26th November 2016. From the reply of prosecution to the application filed by the applicant opposing bail to the applicant, it was stated that identification parade was conducted on 23rd January 2017 and the applicant as well as two other accused were identified. The co-accused who was identified namely Modsingh Vagatsingh Rajput has been granted bail by this Court. There is recovery of Rs.1 lakh at his instance. The co-accused Kishor Gehlot was granted bail by the Sessions Court vide order dated 28th April 2017. It appears that he has not been identified in the identification parade. However, from the objection raised by the prosecution, it appears that he was considered to be the person having major role in the crime. The call records show that the said accused was present in the area of incident and that he was habitual. He is not from State of Maharashtra. However, learned Judge considering the nature of evidence granted bail to the said accused. It is true that the prosecution has collected CDR records which allegedly show the presence of applicant in the vicinity of crime. However, similar role was also prescribed to accused Kishor Gehlot who has been granted bail by the Sessions Court. It is also pertinent to note that Shrivankumar Purohit who has allegedly participated in the crime, is also granted bail by the Sessions Court vide order dated 13th July 2017. The case of prosecution is that his complicity was established

in the crime on the basis of call records. There was recovery of Rs.5 lakh from him. There is apparently no recovery of any amount at the instance of applicant. Mr.Rajput was granted bail by this Court. On perusal of the said order it is apparent that prosecution had relied on four circumstances against the said accused namely test identification parade, the deposit of cash amount in the bank accounts of his friends as well as his account, recovery of cash of Rs.1 lakh from the house of said accused, CDR records and CCTV footage of the scene of offence. While granting bail it was observed that the call detail record of the phone showing presence at the scene of offence cannot be termed as conclusive proof of complicity of the accused and prosecution will have to prove the said fact at the time of trial. The CCTV footage wherein the said accused is seen with a bag in his hand visited the office of informant is the only circumstance against him. The Court further observed that he was arrested on 16th October 2016 and since then he is in jail.

6. In the light of the orders referred to hereinabove and also considering the fact that there is no recovery of any amount from the applicant and that the identification parade was conducted after filing of charge sheet belatedly on 23rd January 2017, case for grant of bail is made out on certain terms and conditions.

7. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.1230 of 2016 is allowed and disposed off;

- (ii) The applicant be released on bail in connection with CR No.330 of 2016 registered with Azad Maidan Police Station, Mumbai, which is subject matter of Sessions Case No.134 of 2017, on furnishing PR bond in the sum of Rs.25,000/- with one or more local solvent sureties in the like amount;
- (iii) The applicant shall furnish documents relating to his residence to the investigating officer forthwith after his release;
- (iv) The applicant shall attend the concerned investigating officer of Azad Maidan Police Station, Mumbai once in a month on every first Monday between 11.00 am and 1.00 p.m;
- (v) The applicant shall not tamper with the evidence;
- (vi) The applicant shall attend diligently the dates of hearing before the Trial Court, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

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