

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

CRIMINAL BAIL APPLICATION NO.1578 OF 2018

Akbarali Lala Shaikh	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Abdul Wahab Khan, Advocate for the Applicant.
Mr.Arfa Sait, APP for the Respondent – State.
Mr.Sanjay R. Mahadik, PI L.T.Marg Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 16, 2018.

P.C. :

Applicant is seeking bail in connection with C.R.No.361 of 2017, registered to L.T. Marg Police Station, Mumbai, for the offences punishable under Sections 342, 395, 397, 120-B, 452 read with 34 of Indian Penal Code ("IPC", for short) and Sections 3, 4 and 25 of Arms Act.

2 The prosecution case is that the informant/complainant is carrying on his business of making jewellery. On 8th November, 2017, between 11:15 p.m. to 11:30 p.m., one person entered in his factory. He took out a pistol and pointed out the same at him and threatened the complainant.

At the same time, another person entered in the premises with pistol, he also threatened the persons present in the factory. They were followed by five more persons who also entered in the factory. Out of them one kept knife on the throat of one worker Vishwajeet Bhunia and also assaulted him. The other two persons pointed out knife and threatened the complainant and others. Then the accused stuck adhesive tape on the mouth of the complainant and others. The assailants then robbed polished and unpolished gold weighing 1270 grams. They also took away three mobile handsets of the workers. The door was shut and locked. Thereafter one of the worker managed to remove the adhesive-tape and untied others. FIR was registered with the L.T. Marg Police Station, Mumbai, on 9th November, 2017.

3 Applicant was arrested on 10th November, 2017. Several other persons were also arrested. Applicant preferred an application for bail before the Sessions Court, which was rejected on 16th May, 2018.

4 Learned counsel for the applicant submitted that there is no cogent evidence to show his complicity in the crime. FIR was registered against unknown persons. It is further

submitted that there is recovery of toy gun at the instance of the applicant. The Test Identification Parade (“TI Parade”, for short) was carried on 4th January, 2018. The TI Parade suffers from infirmities and it is not in accordance with the rules and the provisions of law. It is submitted that five other accused are granted bail. The prosecution has not established as to what role is played by the applicant in the crime. Learned counsel also relied upon the decisions of this Court in the case of ***Sanjay @ Gangadhar Shelke & Anr. Vs. State of Maharashtra***¹, and, another decision of this Court in the case of ***Babulal Jairam Maurya & Anr. Vs. State of Maharashtra***². Both the decisions are related to non compliance of the procedural safeguard while conducting the identification parade. Learned counsel for the applicant also relied upon the orders passed by the Sessions Court granting bail to the co-accused Rahul Salvi, Jayarul Shaikh and Ajay Kasbe.

5 Learned APP, however, submitted that there is sufficient evidence against the applicant. Two witnesses have identified the applicant in TI Parade. It is submitted that the fire gun has been recovered from the applicant, which was used for

1 1999(3) Mh.L.J. Page 71

2 1992 Mh. L.J. Page 1106

threatening the witnesses at the time of commission of offence. It is further submitted that in the light of the TI Parade, the involvement of the applicant in the crime has been established. The co-accused who were granted bail by the Sessions Court were not identified by the witnesses, and, therefore, the applicant cannot claim parity for releasing him on bail. It is submitted that huge amount of gold valued about 36,98,000/-, was being robbed by the accused by entering into the factory of the complainant and threatening the witnesses by pointing out gun and knives. It is, therefore, submitted that the applicant is involved in a serious crime and hence, application for bail be rejected.

6 I have gone through the documents on record. The alleged incident had occurred on 8th November, 2017. FIR was lodged against unknown persons. Applicant was arrested on 10th November, 2017. However, TI Parade was conducted on 4th January, 2018. It is also noted that two witnesses had identified the applicant in the parade which was conducted on 4th January, 2018. The weapon is allegedly recovered at the instance of the applicant which was a toy gun. The identification memo does not indicate the role played by the applicant. There is no statement of

the complainant in pursuant to the identification parade describing the role played by the applicant. The prosecution is relying on the recovery of the clothes at the instance of the applicant, which is equated to the clothes worn by one of the accused, who had entered into the premises when the alleged incident had occurred. Although, other accused have not been identified, it is pertinent to note that there was a recovery of knife and fire gun from the arrested accused, they were granted bail by the Sessions Court. The applicant is in custody from 10th November, 2017. There are no reported antecedents against the applicant. Learned APP submitted that there is one circumstance against the applicant. Applicant was purportedly to be driver of the car, which was used in commission of crime and the said car has been seized by recording panchanama during the course of investigation. It is also submitted that another person who had been identified by the witness and from whom there was recovery of pistol, has been refused bail by the Sessions Court.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No. 1578 of 2018, is allowed;

- (ii) Applicant is directed to be released on bail in connection with C.R.No.361 of 2017, registered to L.T. Marg Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant is directed to attend L.T. Marg Police Station, Mumbai,, once in a month on first Friday of the month between 10:00 a.m. to 12:00 noon, till further orders;
- (iv) Applicant shall not tamper with the evidence ;
- (v) Applicant shall attend the trial Court on the date of hearing regularly, unless exempted by the Court for some reasons;
- (vi) Bail Application No.1578 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)