

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

BAIL APPLICATION NO. 1761 OF 2017

Kishor Dhanaji Khade. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH

BAIL APPLICATION NO. 1284 OF 2017

Sahil Rashid Dapolkar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH

BAIL APPLICATION NO. 1781 OF 2017

Prashant Ashok Kamble. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

WITH

BAIL APPLICATION NO. 1624 OF 2017

Swapnil Suresh Nagaonkar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Abhishek Yende in BA
1624/17.

Mr. Sherali S. Khan, advocate for Applicant in BA 1761/17.

Mr. Kuldeep S. Patil, advocate for applicant in BA 1284/17.

Mr. Sudeep Pasbola a/w. Mr. Bhavesh Thakur, Mr. Karl Khan i/b. Mr. Rahul Arote, advocate for applicant in BA 1781/17.

Mr. A.A. Palkar, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : FEBRUARY 1, 2018

P.C.:

1 Heard the respective learned Counsel for the applicants and the learned APP for State.

2 These are applications under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 6/1/2017 in Crime No. 2 of 2017 registered at Alibag Police Station for the offence punishable under section 395, 364A of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

3 It is the prosecution case that on 6/1/2017 one Surendra Dedia lodged a report at the police station alleging therein that he is an estate agent. He was acquainted with one Munira who is original

resident of Alibag and she was an estate agent. On 13/12/2016 the first informant received a phone call from Munira informing him that there is an open plot adjacent to main road at Alibag. The owner is in need of money. The actual price of the land is more than Rs. One Crore. However, since he is urgently in need of cash, he is willing to sell the same at Rs. 80 Lakhs. The first informant had shown his interest in the said plot and wanted to see the plot on the first day. However, he was specifically informed by Munira that since land owner is in dire need of money, they should come alongwith cash of Rs. 50 Lakhs in new currency. That since the first informant who is the original resident of Mumbai was to go to Alibag with such a huge amount, he has requested his friends Vikas Singh and Vimal Patel to accompany him to Alibag. When they reached Alibag, they had called upon Munira. She had agreed to meet them at Hotel Suruchi. That she was dropped by one person on motor cycle. Thereafter, they had decided to go and see the plot which was to be purchased by the first informant. While at hotel Suruchi, she had made a phone call to one person. That person was introduced to the complainant as the estate

agent and he was to show the plot to the first informant. At the request of the said unknown person, she accompanied the first informant in his car. They were directed to halt near Shankar Mahadeo Temple which was outside Alibag. After sometime, red colour car bearing registration No. MH 43 had come to the spot. Four police personnels had alighted from the said car. The said police personnels had started abusing the first informant and his associates and had started questioning them as to how they could get Rs. 2000 denomination notes of Rs. 40 Lakhs. The first informant was forced to enter in their car. Munira and the other two constables had also accompanied them. After travelling for some distance, the first informant and his associates were asked to alight from the car. The police had informed them that they have come from Crime Branch and that they could arrest them for offence of black marketing and put them into prison. Then they opened dickey of the car and had taken the bag containing Rs. 40 Lakhs. They had also threatened them of dire consequences in the eventuality they refer the said incident to anybody. The first informant could read name plate of

one of the constables and that was Mr. Rathod who is the original accused No. 1.

4 The first informant was in traumatic condition and therefore, did not report to the police station immediately. He discussed with his friends and relatives. In fact, according to the first informant, he had sold jewellery and other valuables from his house only to get the land at cheaper price and that is how he had collected money.

5 All this has to be appreciated in view of the fact that on 8/11/2016 the Government had demonetised notes of denomination of Rs. 1000 and Rs. 500. The court cannot be oblivious of the fact that the incident is dated 26/12/2016. The applicants herein were arrested on 6/1/2017 i.e. on the date when FIR was lodged.

6 The applicant Swapnil Nagaonkar is the original accused No. 6. Perused the papers of investigation. Firstly, there is recovery of Rs. 44,000/- in the denomination of Rs. 2000 notes. That 22 notes of Rs.

2000 denomination were recovered from the present applicant. In the course of investigation, a Red colour I-20 car was identified by the first informant. The investigating agency had recorded statement of one Vaibhav Shelke who was a good friend of Vishal Palkar. According to him, the applicant Swapnil Nagaonkar was driving a white colour Breeza car and had met them. That he and Vishal Palkar were in the company of the applicant Swapnil Nagaonkar till about 4.30 p.m. and thereafter, the applicant had left with one Hrishikesh, who is also an accused in the present case.

7 Thereafter, the investigating agency has recorded the statement of one Ajit Bali, who has disclosed to the police that on 26/12/2016 Ravi Rathod was in the court at Alibag. There he met Ravi Rathod who was in the company of other two persons. Ravi Rathod had introduced Ajit Bali to one of the person whose name is Swapnil Nagaonkar, resident of Chowk and the other was Bhaoji. According to him, they were about to meet a customer on that day and therefore, he had contacted Ravi Rathod. He waited for them till 6

p.m. While departing from his company, he was informed that on that day Munira madam was with a proposed buyer, who wanted to buy a plot. They were discussing about the same. They had informed that they are going to finalise the deal between Munira madam and the purchaser. According to him, at about 6 p.m. he had called upon Rushi who informed him that they had met Munira madam and the customer and they had taken away Rs. 40 Lakhs, which the party had brought.

8 This is in the form of an extra judicial confession. It is pertinent to note that the investigating agency has recorded the statement of Ajit Bali under section 164 of the Code of Criminal Procedure, 1973. He has reported that applicant Swapnil Nagaokar, Ravi Rathod and Rushi were together and at about 6 p.m. Rushi had informed him that they had all snatched Rs. 40 Lakhs from the customer who had approached Munira madam. He had specifically stated in his statement under section 164 of the Code of Criminal Procedure, 1973

that he had read news on 7/1/2017 and could recollect about the information given to him by Rushi.

9 The accused Swapnil Nagaonkar has not been identified by the complainant but he has been identified by Vaibhav Shelke who had specifically stated that he was in the company of Rushi in Breeza car. He was identified by Vishal Palkar and Ajit Bali.

10 The applicant Prakash Kamble in Criminal Bail Application No. 1781 of 2017 is police constable. In fact, he was on duty. In the course of investigation, Investigating Officer has recorded statement of one Swapnil Patil, Police Constable posted at police head office at Raigad Alibag. The constable had disclosed that on 26/12/2016, the applicant was on duty till 12 noon. Thereafter, he had been to the office at about 6 p.m. to lower the flag and thereafter he was not there. In fact, his duty was upto 12 noon and therefore, it cannot be said that it was an incriminating circumstance. According to the

prosecution, the applicant Prashant Kamble had booked Maruti Suzuki Vitara on 4/1/2017 and had paid Rs. 22,000/- as an advance.

11 The learned Counsel for the applicant Prakash Kamble submits that the applicant has put in more than 10 years of service and his wife is also a lady constable and therefore, it cannot be treated as an incriminating circumstance. The applicant-Prakash Kamble has been identified by Vimal Patel and Vikas Singh. He has been named by Ajit Bali who had seen Swapnil Nagaokar, Prashant Kamble moving around in some Breeza car since afternoon. The learned Counsel for the applicant submits that in these circumstances, it cannot be said that there is any incriminating material against the applicant. It is also submitted that the test identification parade is a corroborative piece of evidence and therefore, the applicant deserves to be enlarged on bail.

12 The accused No. 3 Kishore Khade is an applicant in Criminal Bail Application No. 1761 of 2017. He is also police constable. On

26/12/2016 he was given patrolling duty near court. The investigating officer has recorded statement of one Jyotsna Mase, who was also given patrolling duty on 26/12/2016 alongwith present applicant. She had called upon him and informed him about the same. She was to be posted on the rear side of the court whereas the applicant was to do his patrolling job on the first gate. Since 12 noon she had tried to take a round and find out whether the applicant is performing his duty and the applicant was not found on the spot from 12 noon. It can therefore, be inferred that the applicant was not on duty at the relevant time. The papers of investigation would show that the applicant Kishor Khade has been identified by the complainant but his associates Vimal Patel and Vikas Singh, Ajit Bali refer to him as one of the unknown constable and has also stated that Swapnil, Kamble, Rathod and Khade were moving around together.

13 The accused No. 9 Sahil Dapolkar is the applicant in Criminal Bail Application No. 1284 of 2017. The learned Counsel for the applicant submits that the applicant happens to be the son of one of

the principal accused Munira Dapolkar. According to the prosecution, he had dropped his mother at hotel Suruchi on 26/12/2016. On 12/1/2017 Munira and her son Sahil had surrendered before the police. Panchanama was recorded under section 57 of the Indian Evidence Act and it is alleged that it is a matter of record that Rs. 1,06,000/- were recovered from the applicant Sahil. There were in all 53 notes of Rs. 2000/- denomination. The learned Counsel for the applicant submits that there is no material on record to even remotely indicate that the applicant was present at the time when the complainant had been allegedly robbed by the police, Nagaokar and others. It is submitted that he is a young boy who is hardly 19 years old at the time of incident and has been falsely implicated and arrested only because he happens to be son of the principal accused Munira Dapolkar. There is no plausible explanation as to how any boy could carry 53 notes of 2000 denomination within just one and half month of the demonetisation.

14 The learned APP upon query made by this Court submits that the investigating agency has not recorded the statement of the panchas to the recovery panchanama for the reasons best known to the Investigating Officer. It is also pertinent to note that even then the accused was in police custody for about 12 days, the investigating agency could not elicit any explanation for the possession of the 53 notes of 2000 currency and therefore, it is clear that he is not just beneficiary of the offence committed by his mother, but is a partner in the said crime.

15 It is further pertinent to note that the investigating agency for the reasons best known to them have not recorded any memorandum, but it is a case of the prosecution that when the mother and son had surrendered before the police, they were carrying the said amount with them. There is no separate panchanama of the said recovery.

16 The learned Counsel for the applicant submits that recovery by itself will not be an incriminating circumstance, moreover, it has not

been preceded by a memorandum. It is also submitted that there is no role attributed to the applicant and therefore, he deserves to be enlarged on bail.

17 Although there are lacunas in the process of investigation, this Court cannot be oblivious of the fact that an amount of Rs. 1,06,000/- in 2000 denomination has been recovered from the present applicant, which he had voluntarily given in the police station.

18 The learned Counsel further submits that no prudent person would take the amount to the police station to show his complicity in the said offence. However, this aspect can be appreciated at the stage of trial.

19 While perusing the papers of investigation, this Court has observed specifically that there are several lacunas in the investigation for the reasons best known to the police. That out of Rs. 40 Lakhs, the police could recover Rs. 1,50,000/-(Rs. 1,06,000/- plus Rs.

44,000/-). It is surprising that the Crime Branch could not investigate the case properly. The Court cannot be oblivious of the fact that four of the accused persons are police constables who have been identified by the complainant and others.

20 The learned Senior Counsel submits that in the present case, section 364A of the Indian Penal Code would not be attracted for the reasons that the first informant and his associates were neither kept in confinement and had no threat perception except the fact that they have been threatened to be sent to jail. Moreover, there was no demand of ransom either from the complainant himself or his associates or any third person from releasing them. It is true that in the facts of the case, section 364A of the Indian Penal Code would not be applicable. However, section 395 of the Indian Penal Code is attracted.

21 The very fact that the police personnels have committed an offence punishable under section 395 of the Indian Penal Code alongwith their associates not only shocks the conscience of the Court

but shocks conscience of the society as well. The image of the police department in the eye of a common man as a person/public servant to uphold law and to implement law would be diminished. The common man would lose faith in the police. All this would be more serious since there are serious lacunas in the investigation. The police are expected to discharge official duties to subserve the end of justice, law and order whereas in the present case the police have committed offence punishable under section 395 of the Indian Penal Code. They cannot escape the clutches of law because they are police.

22 Upon perusal of the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicants herein do not deserve to be enlarged on bail. Hence, all the applications being sans merits stand rejected.

23 However, it is made clear that the observations made hereinabove are restricted to the application under section 439 of the

Code of Criminal Procedure, 1973 and the trial court shall not be influenced by the same at the time of trial.

24 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)