

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

BAIL APPLICATION NO. 1637 OF 2017

Akshay Kishor Kurhe. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. A.H.H. Ponda i/b. Mr. Karma Vivan, advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 6, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. This is subsequent application. Earlier application was withdrawn on 28/11/2016 with the direction that the trial is

expedited and that shall be concluded within 10 months from the date of framing of charge.

3 The applicant herein is arrested on 3/6/2016 in Crime No. 171 of 2016 registered at Kharghar Police Station on 30/5/2016 for offence punishable under section 395, 364A, 336, 347, 352, 420, 440, 504, 506, 120B read with section 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed on 31/8/2016.

4 It is the case of the prosecution that on 30/5/2016 Rajan Shah lodged a report at the police station alleging therein that he owns a shop, the value of which is approximately Rs. 80 Lakhs. He was to give said shop on rent. He had rented the said shop to the present applicant for a period from 1/1/2016 to 31/12/2016. The rent fixed was Rs. 45,000/-. He used to accept the rent by cheque. In the eventuality when cheque was dishonoured, he used to pay the said amount of rent in cash. Most of the time, one Mayur used accompany the present applicant and therefore, he was acquainted with Mayur.

5 It is alleged that on 26/5/2016 the present applicant had called upon the complainant and had informed him that Mayur would pay rent to the complainant in cash. The applicant alleged to have informed the complainant that Mayur would be near Kharghar Hiranandani bridge. He should come and accept the amount from Mayur. Within no time, he met Mayur at the said spot. He was accompanied by 3 to 4 unknown persons. That he had requested Mayur to pay rent. While he was counting notes which were in the denomination of Rs. 100/-, Mayur had sprayed chilly powder in his eyes. The complainant was allegedly pushed in car and was taken to office of the Registrar. While in transit Mayur had brandished his revolver and had threatened him at gun point. The people who were in the car were insisting upon the complainant to transfer the shop in the name of the present applicant. The complainant was also threatened to the extent that they had called upon shooters and that the complainant would be eliminated. He has given description of the persons who were accompanying Mayur in the car. That Mayur

had collected papers from stamp vendor. The present applicant was present at the said office. The complainant was made to execute an agreement in favour of the present applicant. The applicant had asked Bababhai to abandon the complainant. He was taken to Chandani Chowk and he was given keys of his own car and asked to go home straight and not to inform about the incident to anyone. It is contended that since he was scared, he did not approach to the police station immediately.

6 In the course of investigation, i.e. on 31/5/2016 statement of one Irfan Kazi was recorded, he had disclosed to the police that he used to do work of typing. That on 25/5/2016 Mr. Pawar had visited him and had informed him that a sale deed was to be typed and executed. Mr. Kazi has quoted his fees as Rs. 10000/-. That it was further revealed that it is only agreement to sell not the sale deed. On 26/5/2016, Mr. Pawar had been to the office of Mr. Kazi alongwith the present applicant. Typed agreement was to be registered. The contents of the agreement were as follows : Ramniklal Shah was to

sell the said property in favour of the present applicant. He had taken stamp duty as well registration fees of Rs. 2,92,000/- and also issued receipt to that effect. At about 3 p.m. present applicant and Mr. Pawar has been to his office. The vendor and vendee were present before the Registrar and the said agreement was executed.

7 In the course of investigation, it had also transpired that the present applicant had paid Rs. 1 Lakh to the complainant vide cheque drawn on HDFC Bank. The amount was received by the complainant towards agreement to sell. Thereafter, the supplementary statement of the complainant was recorded on 19/6/2016 wherein it is admitted that the complainant had received Rs. 1 Lakhs but that was towards deposit of the shop. The complainant reiterates that the said amount was not received towards sale deed. However, the agreement to sell was registered before the Sub-Registrar on 26/5/2016 i.e. when the FIR is filed. It is specifically stated that the vendor Mr. Shah intended to sell the shop. The present applicant had given his offer and it was agreed that the shop would be purchased for consideration of Rs. 40

Lakhs.. Rs. 1 Lakh was paid by cheque drawn HDFC bank and it was agreed that Rs. 39 Lakhs would be paid to him on time to time in cash.

8 It is pertinent to note that the said document was registered before the sub-registrar. The complainant had not made any grievance at the time of registration. There are two witnesses i.e. Abhijit Gaikwad and Pandurang Satpute. It is pertinent to note that advocate Irfan Kazi has attested the said agreement to sell. In the charge-sheet the name of the witnesses to the agreement to sell has not been shown in the list of witnesses for the reasons best known to the Investigating Officer as they would be the best person to disclose as to whether the registration was done under coercion or it was voluntary on the part of the complainant. It is not known as to why receipt of Rs. 1 Lakh was not mentioned in the FIR by the complainant.

9 The learned Counsel for the applicant vehemently submits that there is suppression of facts. Moreover, after the applicant has been

arrested, the complainant has sold the said property to one Sandesh Kanade on 10/12/2016. Statement of Sub-Registrar is recorded on 14/6/2016. He has specifically stated that at the time of registration, he enquired with Mr. Rajan Shah whether he had any objection and whether he was signing the said document voluntarily and Mr. Rajan Shah stated that he had no objection and there was no hurdle in executing the said agreement.

10 Taking into consideration all these aspects, this Court is of the opinion that the applicant who is in custody for more than one and half year, deserves to be enlarged on bail.

11 However, 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 while deciding application for quashing of FIR, discharge application or at the time of trial.

12 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)