

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

BAIL APPLICATION NO. 2168 OF 2018

Gurunath Bhima Chavan

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. S.R. Gaud for the applicant.

Mr. Arfan Sait, APP for the Respondent-State.

Mr. Gadkari, P.I., Mulund Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 27th SEPTEMBER, 2018.

P.C.

1. The applicant is seeking bail in connection with CR No. 229 of 2017 registered with Chembur Police Station for the offences punishable under Section 395, 364-A, 384, 341, 324, 323, 504, 506-II read with 34 of Indian Penal Code alongwith Section 66(E) of Information Technology Act. The applicant was arrested on 11th August, 2017.

2. The brief facts of the prosecution case is that the first informant Nemai Narayan Nayak a labour contractor while working with Godrej Company came into contact of accused namely Shanu (applicant), Mukesh Nayar, Nilesh More as they

were running chit fund (Bhisi) and it is further alleged that through all these person first informant came into contact with accused Sameer Sheikh, Mattu (Ganesh Saste) and Rahul. The complainant also invested amount in Bhisi scheme for the year 2014-2015 and had obtained loan from such BC twice, firstly Rs.65,000/- and on the second occasion Rs.58,000/-. Since last six months, the complainant was not paying the monthly installment i.e his part of contribution in Bhisi Scheme due to financial crunch and hence the accused used to visit his place of work and abused him and threatened him for non-payment of the contribution inspite of availing the loan amount for chit fund. It is alleged that on 7th August, 2017 at about 4 p.m accused Mukesh, Shanu (applicant), Nilesh, Mattu, Sameer and Rahul arrived at BARC Gate No.6 where the complainant was working and from cell phone of accused Sameer, they asked the complainant to come near the Gate No.6. However, the complainant did not comply the demand and hence he was threatened on telephonic call. It is also alleged that on 8th August, 2017 at about 7 a.m., when the complainant was having breakfast at Chembur Camp, the accused Mukesh, Shanu (applicant), Nilesh, Matu and Sameer arrived there on three different motor-bikes and caught hold of the

complainant and asked him to sit on motor-cycle. Accused Matu took out knife from his pocket and at the dint of knife he threatened the complainant to sit on his motor-cycle and present applicant pushed him to sit on the motor-cycle and accused Matu set on the same bike which was driven by the applicant. It is further alleged that the accused brought the complainant in one room at Tagore Nagar, Vikroli and demanded Rs.11,00,000/- from him and asked him to put his signature on a blank paper. However, the complainant refused to do so. The accused manhandled the complainant and recorded nude video. It is further alleged that the accused made a video call to the brother of the complainant and told him that his brother is indulging in illegal business and to rescue him, they have paid Rs.11,00,000/- and the same amount be returned to them or else they would kill him. It is further alleged that the accused assaulted the complainant. One of them had assaulted him by Bamboo and thrown a bear bottle over his head. Accused Shanu and Matu snatched away cash amount of Rs.19,300/-, identity card, election card, Aadhar Card, PAN card, ATM card, two blank cheques and other articles from the complainant. The accused also withdrew the cash amount from the ATM of the complainant after obtaining

PIN number from him. On 9th August, 2017, accused Mukesh called one of his friend who paid Rs.100 to the complainant and asked him to make arrangement of Rs.5,00,000/- within two hours. The complainant thereafter lodged the First Information Report on 11th August, 2017.

3. Learned counsel for the applicant submitted that the applicant was arrested on 11th August, 2017 and for a period of one year he is in custody. It is further submitted that there is delay of 48 hours in recording the First Information Report. The complainant was not paying the contribution towards bhisi after obtaining the loan amount. The accused used to demand the said amount from him and hence they have been falsely implicated in this case. The charge under Sections 395, 364-A and 384 is not attracted. It is submitted that the complainant and accused were known to each other prior to the alleged incident and it is also not in dispute that the complainant has availed off the loan facility from chit fund on two occasions. He obtained Rs. 65,000/- and Rs.58,000/- and he was not repaying the said amount since last about six months. The alleged act committed with a view to recover the said amount. It is therefore submitted that the penal provisions invoked by the prosecution will not be attracted in the

present case. The accused were demanding money on account of non-payment of the said loan amount by the complainant. It is submitted that the complainant was set at liberty on 9th August, 2017, however, FIR was lodged on 11th August, 2017. The Sessions Court has granted bail two co-accused Mukesh Nayar vide order dated 27th March, 2018 and accused Sameer @ Mobin Dastur Sheikh vide order dated 2nd May, 2018 having similar role. However, the application of the applicant was rejected by the Sessions Court. One of the ground for rejection of bail was that the applicant had allegedly used knife and that he is the main accused. It is submitted that on perusal of FIR, it cannot be said that the applicant has used knife. The allegation made against the applicant is that he had forced the complainant to sit on his bike and assaulted him by hand while bringing him to Vikroli. It is submitted that the observation of the Sessions Court is therefore contrary to record. It is submitted that the other accused namely Nilesh More is also granted bail by the Sessions Court. It is thus submitted that the applicant be released on bail.

4. Learned APP submitted that the accused is involved in serious crime. The offence under Section 364 A of Indian Penal Code is a serious offence. The applicant and other accused

threatened the complainant and took him to another place. They also took his nude picture on mobile. The accused also threatened the complainant and took his ATM Card Pin number and withdrew some amount from the account. The accused also demanded money from the brother of complainant by making video call. It is submitted that the applicant has played a major role in the crime and hence, the application be rejected.

5. Perused the documents on record. It is apparent that the complainant and accused were known to each other prior to the alleged incident and it is not disputed that the complainant had availed loan facility in the form of chit fund conducted by the accused. The complainant had obtained Rs.65,000/- and Rs.58,000/- and the accused were demanding the return of the said amount. The alleged incident had occurred on 8th August, 2017. The complainant was allegedly set at liberty on 9th August, 2017. The FIR was lodged on 11th August, 2017. The Sessions Court has granted bail to co-accused Mukesh Nair vide order dated 27th March, 2018 and Sameer @ Mobin Dastur Sheikh vide order dated 2nd May, 2018. However, while rejecting the application for bail vide orders dated 21st June, 2018 and 20th July, 2018 the Court had observed that the applicant had used knife and role of

the applicant is of main accused. Perusal of the FIR, makes it clear that it does not mention any role to the applicant having used knife in commission of the offence. It is alleged in the FIR that he had forced the complainant to sit on his motor cycle and assaulted him by hand took complainant to a room at Vikroli. Therefore, there is no distinction of role of applicant and the others who were granted bail. There was recovery of motor-cycle and mobile phone at the instance of the other accused. The said accused are granted bail by the trial Court. The applicant is in custody from the date of arrest. Investigation is completed and the chargesheet has been filed. Taking into consideration the aforesaid aspect, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application No. 2168 of 2018 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 229 of 2017 registered with Chembur Police Station on furnishing P.R. Bond of Rs.25,000/-with one or more sureties in the like amount;
- iii) The applicant is permitted to furnish cash security in the sum of Rs. 25,000/- for the period of four weeks from today;
- iv) The applicant shall report Chembur Police Station once in a

month on first Saturday between 10 a.m. to 12 noon till further order;

- v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;
- vi) The application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidana
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Nair

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by Sachidanand
Kuttan Nair
Date:
2018.10.15
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