

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2332 OF 2018

Rajesh Dayaram Sharma, Age 22 years,
R/o.Rupadevi Pada No.2, Om Sai Chawl,
Road No.33, Wagle Estate, Thane (W)-400 604.
(Presently lodged at Arthur Road Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.A.M.Saraogi I/by Ms.K.A.Gandhi for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.Santosh Shamrao Jadhav, Police Inspector, MIDC Police Station,
Thane, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th December 2018

PC :

1. This is an application for bail in CR No.75 of 2018 registered with MIDC Police Station for offences under Sections 397, 120B r/w 34 of Indian Penal Code r/w Section 25 of Arms Act. The FIR was registered on 23rd February 2018.

2. The prosecution case is that the complainant is the employee as a cashier at Bar owned by one Robert Menzies at Andheri. On 22nd February 2018 at about 3 pm, the complainant had collected the cash and was carrying the same in the bag to be delivered at the residence of the owner of bar. While on the way he was intercepted by three persons who came on motorcycle. Two of them got down and caught hold of him. The person who continued to sit on the motorcycle told others to snatch the bag. One of them tried to

snatch the bag which was obstructed by the complainant. At that time the other person who got down from the motorcycle, assaulted the victim by sharp weapon like sickle by giving blows on his back. The complainant sustained injuries. The accused snatched the bag and left the place of incident and went towards Mumbai on motorcycle. The complainant then informed the incident to his owner. The FIR was lodged. The statements of witnesses were recorded and the charge sheet has been filed.

3. The FIR was lodged against unknown persons. During the course of investigation the applicant and four other accused were arrested.

4. Learned counsel for applicant submitted that there is no evidence to show involvement of the applicant in the crime. The FIR was lodged against unknown persons and it is not established as to how the involvement of the applicant was revealed. It is further submitted that three other persons who were arrested, were granted bail. The charge sheet does not contain documents relating to identification parade of the applicant. It is further submitted that investigation is complete and charge sheet is filed. However, the prosecution is relying on purported identification parade conducted on 25th May 2018, which cannot be accepted as a gospel truth having conducted it belatedly. The applicant is in custody from the date of arrest and further custody is not necessary.

5. Learned APP submitted that the applicant has been identified in the parade which was conducted on 25th May 2018. There is delay in conducting the parade since the complainant was not available for

parade. There is recovery of cash of Rs.22,770/- at the instance of applicant. CDR record indicates presence of the applicant in the vicinity of the crime. It is, therefore, prayed that the application for bail may be rejected.

6. On perusal of the FIR and other documents it is apparent that the alleged incident had occurred on 23rd February 2018. The FIR was lodged against three unknown persons. Learned APP had submitted that involvement of the applicant was revealed on secret information and thereafter one of the accused namely Mahesh Chaurasia was arrested on 22nd March 2018 and during the course of interrogation he disclosed the involvement of other accused. It is pertinent to note that till investigation is completed and charge sheet is filed, test identification parade was not conducted. The complainant was discharged from hospital within two days. There is no plausible explanation for conducting the parade after filing of charge sheet. The prosecution has not been able to establish link between cash recovered from the applicant-accused and the amount which was allegedly stolen by the accused. There is nothing to indicate that since the FIR was lodged against unknown persons, the applicant was produced before the Court by covering his face. The statement of complainant is not recorded after the parade was conducted to show the role allegedly played by the applicant in the crime. Although it is the case of prosecution that three persons were involved in committing the alleged offence investigating machinery has arrested about five persons. In the circumstances merely on the ground of recovery of amount and CDR record, the applicant cannot be detained further. No criminal antecedents are reported against the applicant. Learned APP, however, submitted that the case of co-

accused stands on different footing as there is no recovery from them. However, considering the aforesaid circumstances and the fact that applicant is in custody from 27th March 2018 and having filed the charge sheet on completing investigation, case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2332 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.75 of 2018 registered with MIDC Police Station, Mumbai, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report MIDC Police Station, Mumbai once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Court for any reason;
- (v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.

(PRAKASH D. NAIK, J.)

MST