

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

CRIMINAL BAIL APPLICATION NO.2494 OF 2017

Ganesh Balasaheb Changale

..Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Aniket U. Nikam i/b Mr. Aashish Satpute for Applicant .

Ms. Veera Shinde, APP for Respondent.

Mr. S. B. Mundhe, PSI, Ambad Police Station, Nashik City.

CORAM : P. N. DESHMUKH, J.

DATE : 11th APRIL, 2018

P.C.:

. This application is filed for bail in CR No.132/2016 registered with Ambad Police Station, District Nashik on 31/5/2016 for the offence punishable under sections 395, 307, 386, 506(ii), 323, 504, 294, 120B, 109 of the IPC and 3(25), 4(25) of Arms Act and under section 135 of Maharashtra Police Act. Learned APP on instructions from Investigating Officer who is present in the Court makes a statement that in the present crime there are in all 12 accused and provisions of MCOCA Act are not invoked against applicant but only against 6 other co-accused.

2. Heard Mr.Nikam, learned counsel for applicant and Ms.Shinde, learned APP for Respondent-State. Perused charge-sheet. It is submitted that in the entire charge-sheet there is absolutely no evidence establishing applicant's involvement in the present crime and for that purpose learned

counsel has referred to documents filed along with charge-sheet and on reading contents of report dated 1/6/2016 submitted that same is in respect of incident dated 31/5/2016 wherein there is no involvement of applicant and has contended that even otherwise report is exaggerated as injury report reveals that complainant has sustained only two simple injuries. It is further submitted that additional statement of complainant came to be recorded on 2/6/2016. Contents of which are contrary to the contents of report with regard to removal of amount of Rs.7300/- by the co-accused from the pocket of complainant. It is further contended that additional statement came to be recorded on 15/6/2016 wherein no involvement of applicant is there and in this statement complainant has only given details of amount of Rs.7,300/- which is alleged to be taken by co-accused on 31/5/2016. It is further contended that in addition to statement on 18/6/2016 and prior to that on 17/6/2016 complainant lodged one more report with regard to incident of his kidnapping on 16/6/2016 on the basis of which C.R. No.132/2016 came to be registered and admittedly applicant is not in any manner concerned with the said crime, however was arrested and admittedly released on bail. It is contended that even in the statement dated 18/6/2016 no name of applicant is mentioned.

3. Similarly, in the complainant's statement recorded under section 164 of Cr.P.C. on 18/6/2016 he has not involved applicant wherein

complainant had stated same facts as of incident dated 31/5/2016 and subsequent incident dated 16/6/2016 and lastly by referring to 5th additional statement of complainant recorded on 25/7/2017 submitted that it is only in this statement applicant came to be involved as one amongst other co-accused who were together on 31/5/2016 when complainant is stated to have assaulted by them and amount of Rs.7,300/- is removed from his pocket. It is therefore submitted that in view of statements as aforesaid there is no reason to reject the application and by referring to eye witnesses statements had contended that none of the eye witnesses have involved the applicant and since there is absolutely no evidence against applicant and he is in custody from 25/7/2017, application be allowed.

4. Learned APP opposed the application on the ground that four offences are registered against him out of which three are registered with Sarkar-wada Police Station and one with Indira Nagar Police Station. Out of these fourth offence is under section 399, 402 read with 34 of the IPC and under section 3(25) of Arms Act and appears to be under investigation and in remaining three charge-sheet appears to have been filed.

5. In the background of submissions advanced as aforesaid perusal of report dated 1/6/2016 lodged by Shubham Vijay Bhavsar reveals that on 31/5/2016 at about 3.00 p.m. to 3.30 p.m. while he was

proceeding near from *Rajababu* wine shop he was called by co-accused Shakir Nasir Pathan @ Motha Pathan, Shahidya Shaikh @ Dahshat, Ganesh Suresh Wagh @ Ganya Kawlya, Mukesh Rajput @ Makya and other 4-5 boys attached to Tipper gang. Complainant was knowing all of them and had stated that on his going near them he noticed Motha Pathan having armed with pistol, Ganya Kawlya and Makya Rajput having armed with iron rods and Shahidya Shaikh having armed with sword and Motha Pathan on the point of pistol demanded Rs.5 Lakhs to complainant. When he refused to part away with such amount, all of them committed assault upon him. He further stated that in the assault Makya Rajput and Ganya Kawlya had committed assault by iron rods simultaneously and Shahidya Shaikh by sword on his head which he missed and sustained injury on his chest and in the course of same transaction all the accused persons removed Rs.7,300/- from his pocket and ran away. On the basis of report lodged by him offence came to be registered vide C.R. 132/206 of which present application arise. The contents of FIR as aforesaid when compared with injury report of the complainant falsifies the same mainly on the point of assault on complainant as from the injury certificate issued by government hospital dated 31/5/2016 complainant is certified to have sustained one blunt trauma over chest and one abrasion on his chest which are stated to be simple injuries. Considering the injuries as aforesaid complainant appears to have exaggerated the report on the point of assault. Even otherwise applicant is not named in report.

6. First additional statement of complainant came to be recorded on 2/6/2016 wherein also there is no involvement of applicant. In fact contents of this additional statement are contrary to his report where it is stated that amount of Rs.7,300/- was removed from his pocket by co-accused Shakir Pathan. However, without going into this aspect at this stage on considering second additional statement of complainant dated 15/6/2016 he has only given details of Rs.7,300/-, as to how he came in possession of said amount and thus is also of no significance for the purpose of considering present application. Third additional statement of complainant is recorded on 18/6/2016 which is in respect of complainant being kidnapped on 16/6/2016 at about 10.30 a.m. near from Upendra Nagar, Nashik. However, in this statement also there is no involvement of applicant in any manner.

7. At this stage it is material to note that one day prior to this additional statement on 17/6/2016 complainant had lodged report about the said incident of his kidnapped on 16/6/2016 as aforesaid and on the strength of said report CR. No.132/2016 is registered with Ambad Police Station for the offence punishable under sections 395, 307, 386, 506(2), 323 and 504 of IPC and 3(25) of Arms Act and under section 135 of Maharashtra Police Act. Admittedly, applicant is granted bail in this crime. It is further material to note that as there is no mention of applicant in his

report dated 17/6/2016 , the said report as such appears to be of no use to prosecution at all.

8. From the charge-sheet it is further noted that even in the statement of complainant recorded on 18/6/2016 under section 164 of Cr.P.C. he has not involved applicant. In the said statement he has stated the same facts which are already stated by him in his earlier statement with regard to incident dated 31/5/2016 and 16/6/2016. According to prosecution involvement of applicant is based on fifth additional statement recorded on 25/7/2017 as in this statement complainant has identified applicant as one of the accused, who was along with co-accused when incident dated 31/5/2016 took place.

9. In the background of case of prosecution as aforesaid on the basis of which charge-sheet in the present crime is registered on bare perusal of said additional statement reveals that police confronted complainant with one person said to be one amongst co-accused who on earlier date had committed assault on complainant and in the course of same transaction had removed amount of Rs.7,300/- from his pocket. Applicant is accordingly arrested in this crime on his own statement. Perusal of this report prima facie does not appear to be convincing for the reason that accused/applicant himself stated to police that he was one of assailants of complainant, which in itself is an inadmissible evidence. As

such only thing which can said to be established by prosecution by recording fifth additional statement on 25/7/2017 is of complainant identifying applicant to be one amongst the co-accused who had assaulted complainant on 31/5/2016. Even complainant does not appear to be aware of name of applicant as according to the statement on inquiry by police applicant stated his name as Ganesh.

10. In view of above facts and reasons, application is liable to be allowed as per order below:

ORDER

- i) Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount;
- ii) While on bail applicant shall attend Ambad Police station, Nashik on first day of each month initially for a period of 6 months and thereafter quarterly on first day of each such month pending trial;
- iii) Applicant shall not tamper with witnesses;
- iv) Application is disposed of as allowed.

(P.N. DESHMUKH, J)