

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

CRIMINAL BAIL APPLICATION NO. 1981 OF 2018

Sandeep Vithoba Nagothanekar ... Applicant.

V/s

The State of Maharashtra ... Respondent.

Mr. Kuldeep S. Patil, for the Applicant.

Mr. S.H. Yadav, APP for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th November, 2019

PC :

. This is an application for bail in connection with C.R. No. 02 of 2017, registered with Alibag Police Station, District - Raigad, for the offences punishable under Sections 395, 364-A of the Indian Penal Code ("IPC", for short). The applicant was arrested on 9th January, 2017.

2 The alleged incident had occurred on 26th December, 2016. The First Information Report ("FIR", for short) was lodged on 06th January, 2017. The prosecution case is that on 13th December, 2016, the informant received a phone call from accused Munira. She informed him that a plot of land is available for sell at a discounted rate as the

owner is in need of money. On account of demonetization of currency notes the owner is unable to sell the plot. It was further informed that the owner could execute the agreement for sale if an amount of Rs.50 lakhs was paid to him. On 26th December, 2016, the informant contacted Smt. Munira. She told that the owner is in urgent need of money and he is ready to sell the plot for consideration of Rs.80 lakhs although the price is to the tune of Rs.1 Crore. The accused Munira also told the informant that he should arrange Rs. 50 lakhs immediately. Since huge amount was required to be carried in his possession, the informant contacted his friend who also showed willingness to accompany him. The informant collected an amount of Rs.50 lakhs and reached Panvel. He was accompanied by Vimal Patel and Vikas Singh. All of them proceeded to Alibag. They reached near hotel Suruchi. Smt. Munira introduced one person to the informant as agent of the plot. All of them went to the plot shown by Munira which is outside city of Alibag. Subsequently, four persons alighted from the car. They were wearing police uniform. The driver of the said car was in civil dress. The persons in uniform questioned the informant about the source of amount and forced him and his friends to sit in the car. It

is further alleged that the accused then took away cash of Rs.40 lakhs . The FIR was lodged. The investigation was completed and the charge-sheet is filed.

3 During the course of investigation, about ten persons were arrested. Co-accused Munira, who represented informant about the availability of the plot, was granted bail on medical ground. Accused no. 5-Rushikesh Sadashiv Suryagandh purportedly agent of the plot was arrested and granted bail.

4 Learned counsel for the applicant submits that there is no authentic evidence against the applicant. The identity of the applicant as a person who was at the scene of the offence or had participated in the crime is not established. He further drew my attention to the Test Identification parade memo which would indicate that the informant and the two other witnesses who were accompanying him and eye witnesses to the incident had not identified the applicant in the parade.

5 Learned APP submitted that offence is of serious nature. The complainant was kidnapped by the accused

who acted in connivance with each other. There is evidence in the form of CDR which indicates that there were conversation between the applicant and accused no.1 before and after the incident. He further submitted that the tower location report indicates that the applicant was in the nearby vicinity at the time of commission of offence. There is recovery of cash of Rs. 50 Thousand from the applicant. Learned counsel for the applicant, however, submitted that since there is evidence in the form of conversation between the applicant and accused no.1, the same cannot be considered as incriminating evidence as he was known to accused no.1. It is pertinent to note that the applicant has not been identified in the Test Identification parade by all the three eye witnesses to the incident. The clinching evidence about identity and presence of accused at the scene of offence it not established. The case of the applicant stands on different footings as he has not been identified. The identity of co-accused, who were refused bail, was not in dispute. It is also pertinent to note that the alleged incident has occurred on 26th December, 2016 whereas the FIR was lodged on 6th January, 2017. The applicant is in custody almost for a period of 2 years and 10 months. There are no criminal antecedents against the

applicant. Considering the circumstances, case for grant of bail is made out. Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1981 of 2018 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No. 02 of 2017 registered with Alibag Police Station, District - Raigad, on his furnishing PR Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report Alibag police station, District-Raigad once in a month on first Saturday of the month between 10:00 a.m. to 12:00 p.m. till further order;
- (iv) The applicant shall not tamper with the evidence;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)