

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3017 OF 2018

Irshad Shakil Ahmed, Age 40 years,
R/o.Room No.704, Medatiya Raviraj Building,
Ideal Park, Mira Road (East), Dist.Thane.

Applicant

versus

The State of Maharashtra

Respondent

Ms.Anjali Patil for applicant.

Mrs.G.P.Mulekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th February 2019

PC :

1. The applicant has preferred this application for bail under Section 439 of Cr.P.C. The FIR is registered on 8th July 2017 with V.P.Road Police Station vide CR No.141 of 2017 for offences under Sections 170, 420, 365, 506(II), 342 r/w 34 of Indian Penal Code. The investigation was then conducted by DCB, CID, Unit-1, Mumbai vide CR No.33 of 2017. The investigating agency also invoked Section 392 of Indian Penal Code.

2. The prosecution case is that the complainant is working with Jigar Mahendra Shah as Manager. His employer is conducting business of clothes. On 7th July 2017 the complainant's employer informed him to collect amount of Rs.30,00,000/- from the party at Opera House, Charni Road. At about 3.30 pm, the complainant visited the said place. At about 4 pm, one person namely Rajesh Shah came at the spot and handed over amount of Rs.30,00,000/-.

The complainant took possession of the bag containing cash amount and hired shared taxi from Charni Road Railway Station upto Bhuleshwar market. While walking one person approached him and informed him that he is policeman attached to Crime Branch. Another person also approached him and inquired about the contents of bag. The complainant sought identify of the said persons. The mobile phone of the complainant was taken over by said persons. They hired taxi in which the complainant was made to sit and all of them informed the taxi driver that they are from police department and informed him to take taxi to L.T.Marg Police Station. However, instead of taking the taxi to L.T.Marg Police Station, it was taken to Bandra via Girgaum Chowpatty, Babulnath Mandir, Haji Ali and Lotus Junction. On inquiry, the complainant informed them that the bag contains cash amount. They also made inquiry about source of amount and to whom the amount belongs. One of them snatched the bag from the complainant. They did not allow the complainant to gave call to his employer. When they reached near Worli Police Station, the person sitting next to the complainant got down from the vehicle and the person sitting next to the driver came and sat near the complainant. The person who got down from the vehicle informed others that the complainant should be taken to Bandra Police Chowky and he disappeared from the said place. The person who got down took away the bag containing the amount with him and for some time other person under the pretext of buying something to eat also got down from the car. However, they did not return back. The complainant gave call to his employer and informed about the incident. The employer told him to return to the office. Subsequently, FIR was lodged with aforesaid police station.

3. Learned counsel for applicant submitted that there is no evidence to establish involvement of the applicant in the crime. The complainant has not taken name of the applicant in the FIR. The applicant was arrested on 7th August 2017 and after a period of about one month from the date of his arrest, supplementary statement of complainant was recorded on 15th September 2017. It shows the alleged involvement of applicant. It is further submitted that the statement of all other witnesses who had allegedly referred to the involvement of applicant as conspirator were recorded belatedly. The evidence of the said witnesses is hear say. It is further submitted that none of the witnesses have identified the persons who had actually participated in the crime. The co-accused Vishwanath Rao has been granted bail by this Court. It is further submitted that the co-accused Rekha Chaurasia who is alleged to be involved in the conspiracy has been granted bail by the Sessions Court vide order dated 2nd May 2018.

4. Learned APP submitted that three persons were present at the spot of incident and along with them one has been identified by the witness. It is submitted that the applicant is master mind in the crime. He had hatched the conspiracy with others which was implemented with the help of co-accused. It is submitted that there is recovery of Rs.15,000/- and Rs.1,30,000/- at the instance of applicant. Learned APP pointed out the statements of witness Nilesh Parab and Imtiaz Sheth in support of her submission that the applicant was instrumental in hatching the conspiracy as he had knowledge about the transactions of the complainant.

5. I have perused the charge sheet. The incident had occurred on 7th July 2017. The FIR was lodged on 8th July 2017. The applicant was arrested one month after registration of FIR on 7th August 2018. The case of the prosecution rests on the charge of conspiracy against applicant. The involvement of applicant is spelt out in the supplementary statement of applicant, which was recorded on 15th September 2017 which is after a period of one month after his arrest. The statement of Nilesh Parab was recorded on 23rd August 2017. He has also referred to the involvement of co-accused and reference is also made to co-accused Rekha as conspirator in the rime. The said accused has been granted bail by the Sessions Court. The other accused who was allegedly involved in the crime namely Vishwanath Rao has been granted bail by this Court. Learned APP submitted that applicant is involved in similar case. Learned counsel for applicant, however, submitted that the applicant was arrested in other case on 1st September 2017 after his arrest in present case. The said case was registered against unknown person. The applicant has been granted bail in the said case. Thus, the applicant has been charged for being a conspirator. In the light of nature of evidence as stated above, the circumstance of grant of bail to other accused and the fact that applicant is in custody from 7th August 2017, further detention of the applicant is not required and case for grant of bail is made out.

6. Hence, I pass following order :

ORDER

- (i) Leave to amend to correct name of applicant in the cause title of application. Amendment be carried out forthwith;
- (ii) Criminal Bail Application No.3017 of 2018 is allowed and disposed off

- (iii) The applicant is directed to be released on bail in connection with CR No.141 of 2017 registered with V.P.Road Police Station on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iv) The applicant shall report V.P.Road Police Station once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Trial Court for some reason;
- (vi) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for six weeks.

(PRAKASH D. NAIK, J.)

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