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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.229 OF 2021

Akshay s/o Khanderao Jagtap = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mrs.Rashmi S.Kulkarni, Advocate for Applicant/s;

Mr.SB Narwade,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 4th May, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.248/2019 dated 18.7.2019, registered with Kopargaon city police station, Ahmednagar for the offence punishable under Section 398 read with 34 of IPC and Section 3, punishable under Section 27; section 7 punishable under section 27 of the Indian Arms Act. He has filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate for the applicant and learned APP for Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that he is in jail for a considerable time. He had approached this Court earlier by filing Bail Application No.1138/2020,

but that application came to be withdrawn with liberty to file an application for regular bail before the Sessions Court after receipt of Ballistics Expert's report. Even till today, the said report is not produced before the Sessions Court. The investigation is complete and charge sheet is filed, therefore, further physical custody of the applicant is not required. The test identification parade was also conducted about a year ago. The applicant has cooperated in the investigation. In fact, the informant in her FIR had alleged that the incident had taken place at about 10.45 pm. It is surprising to note that still she could identify the assailant applicant after a gap of one year. Therefore, possibility of identification parade, in any form, cannot be ruled out. The discovery of the weapon, including country-made pistol, appears to be very much suspicious. The incident is stated to have been occurred on 17.7.2019 and the alleged discovery has been made on 4.6.2020. That means, almost a year after the alleged incident. The weapon is shown to have been discovered from a place below earthen pot in the balcony of house of the applicant. It can be also seen that initially the FIR was registered for the offence punishable under Section 307 of IPC, however, it came to be registered under Section 398 of IPC. There is absolutely no statement, which would show that the assailant had tried to rob the informant at a gun point. The prosecution had also objected to the application on the ground that the applicant is a history-sheeter.

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But, it can be seen that in one of the offences the applicant has been acquitted and he was not even named in respect of second FIR. Therefore, he deserves to be released on bail.

4. The learned APP strongly opposed the application and submitted that if we consider the FIR lodged by one Mala Deepak Dhongdi, it would show that she runs a wine shop, and at the relevant time, she was taking cash in her hand. Definitely this could have been done only by those persons, who were watching the activities of the informant. She has stated that she runs the wine shop and when the person had tried to obstruct her way and asked her two-wheeler on which she was proceeding to back side and when she refused, that person pointed out the pistol at her and when she realized that that person was about to pull the trigger, she resisted hand of that person, by taking it from downward direction to upward direction and due to the pulling of the trigger, at that moment, the round was fired. Certain persons came running towards her and, therefore, that person fled away. Thereafter, identification parade has been conducted. After the present applicant was arrested, she has identified the applicant. So also, the weapon has been discovered under Section 27 of the Indian Evidence Act. Though, the act was not complete; yet it was only because of braveness, courage and presence of mind shown by the informant that she could save her life as well as she could save her money also. The statements of

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witnesses have been recorded, who state that such incident has taken place. The evidence that has been collected against the present applicant is sufficient to convict him and, therefore, he does not deserve any kind of sympathy.

5. At the outset, several opportunities were given to the prosecution to bring Ballistics Expert's report; however, it has not been made available to the Investigating Officer up till now. In the meantime, the Investigating Officer has filed charge sheet, which may lead us to the conclusion that further physical custody of the applicant for the purpose of investigation is not required. After filing of the charge sheet, we are required to consider as to what material has been collected against the applicant. The contents of the FIR are already reflected in the foregoing paras and, therefore, they are not repeated here. Definitely, there would have been watch on the activities of the informant and when she started from her shop by taking the day's collection; after interception by the applicant, that too with the pistol in hand, only intention that can be gathered, was to commit offence of extortion. The said pistol has been recovered from the house of the applicant under Section 27 of the Indian Evidence Act. Now, admissibility and truthfulness of the said panchanama cannot be gone into here in this bail application. Only fact is required to be seen that the discovery is at the instance of the present applicant. At this stage, the evidence is

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that the informant has identified the present applicant. Now, how she had identified him and whether there was a foul play or not, would be decided at the time of trial. That pistol was shot and the empty cartridge was found from the spot. Now, the prosecution wants to establish the nexus between the empty cartridge and said weapon. Though at this stage, the report of Ballistics Expert has not been received; the fact that is required to be considered is that there is recovery of the weapon from the present applicant, which was used in the commission of the crime.

6. Another aspect to be noted is that there are many cases filed against the present applicant. Definitely some of them are still pending. When he has such criminal antecedents, there appears to be prima facie evidence, involving him in the commission of the crime and, therefore, he does not deserve to be released on bail. The application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV