

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1275 OF 2021

Vishal @ Baba Achut Patil

Applicant

versus

The State of Maharashtra

Respondent

Mr.Meghdeep Oak with Adv.Rishabh Gugale and Adv.Pravada Raut
for applicant.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 28th April 2021

PC :

1. The applicant is seeking bail in CR No.70 of 2016 registered by Anti Extortion Cell, Crime Branch, CID. The FIR was initially registered vide CR No.483 of 2016 by Amboli Police Station for offence u/s 302 r/w 115, 120-B IPC, 387 r/w 34 IPC.

2. The case of the prosecution is that information was received that one Ijaz Lakdawala and Prashant Rao had decided to attack Umar Lakdawala on 27th November 2016. Accordingly police laid trap. Sagar Indulkar and Ankush Tayade came on motorcycle and stopped at Malkam Bagh Colony and walked towards Anora Showroom. Their movements were suspicious. They were apprehended by Police. On conducting personal search in the presence of panch witness, one fire arm, mobile hand set, live cartridges, sharp weapon were found in their possession. An unlicensed fire arm of 7.65 bore pistol was found loaded with five live cartridges in possession of Ankush. During the enquiry it was

revealed that accused had come armed and prepared for attack on Mohammed Umar Iqbal Lakdawala on instructions of Ijaz Lakdawala due to non payment of extortion amount. Both the accused were arrested. During the course of investigation the applicant was arrested on 28th November 2016 with co-accused Sagar Chavan. On completing investigation charge sheet was filed.

3. The applicant had preferred application for bail before this Court which has been rejected by order dated 27th February 2019.

4. The applicant thereafter preferred another application for bail before Sessions Court which was rejected by order dated 20th January 2020. Subsequently another application was preferred by the applicant purportedly u/s 436A of Cr.PC seeking release of applicant on bail. It was contended that the applicant is in custody for four and half years. The said application was rejected by learned Sessions Judge by order dated 16th June 2020.

5. Learned advocate for applicant submitted that the applicant is languishing in custody since four and half years. There is no progress in trial. Even charge has not been framed. There are no criminal antecedents against applicant. The applicant has no connection with the underworld gangster Ijaz Lakdawala. There was no connivance between applicant and the said co-accused. The charge u/s 302 IPC has been dropped by the Sessions Court vide order dated 17th February 2018. The maximum punishment which can be imposed by invoking Section 115 of IPC in the present case, could be seven years. The applicant has already undergone more than half the sentence and in view of Section 436A of Cr.PC, the

applicant deserves to be released on bail. It is submitted that the applicant is allegedly the conspirator in the crime. However, there is nothing to prove his involvement as a conspirator except one chit bearing address of the proposed victim. There is no other evidence to connect the applicant with the conspiracy. He is not habitual offender. The arrest panchanama dated 27th November 2016 indicate that two mobile hand sets were found in possession of the applicant bearing No.88983344320 and 8097961798. The panchanama dated 5th December 2016 obtained specimen handwriting of the applicant and was recorded. The statement of witnesses were recorded indicating that applicant is acquainted with Sagar Indulkar. The applicant known Sagar Indulkar, Sagar Chavan and Ankush Tavade by face. Further detention of the applicant is not necessary. In spite of directions of this Court, the charge has not been framed against applicant. The trial has not delay by the applicant.

6. Learned APP submitted that there is sufficient evidence showing involvement of applicant. The opinion of handwriting expert in respect to the chit supports prosecution case. There is evidence to substantiate the charge of conspiracy. The offence is of serious nature. Previous application was rejected by this Court on merits. On instructions of Prashant Rao the accused nos.1 and 2 were hired. The chit recording address of the victim was handed over by the applicant. There was connection between applicant and accused no.5. The prosecution is relying on CDR.

7. Learned counsel for applicant has relied upon decision of Supreme Court in the case of **Union of India Vs. K.A.Najeeb (AIR-2021-SC-712)** and the order passed by this Court in **Bail Application**

No.2613 of 2019 Mohiuddin Sayyed Shaikh @ Mani Vs. The State of Maharashtra granting bail to the accused therein. Reliance is also placed on the decision of Supreme Court in the case of **State of Kerala Vs. Ranif (AIR-2011-SC-340)**.

8. The applicant is in custody from 28th November 2016. The previous application preferred by the applicant was rejected by order dated 23rd February 2019. Thereafter more than two years have passed. There is no progress in the trial. This Court vide order dated 8th January 2021 had observed that by order dated 17th February 2018 the Trial Court had observed that there is no purpose in framing charge u/s 302 IPC as there was no homicidal death. The trial has not commenced. Charge is not framed. The accused was not produced on the previous date of hearing. This Court directed that the Trial Court shall proceed to frame charge and further proceed in view of the fact that applicant is in custody from 28th November 2016. Learned APP has pointed out that case before Trial Court was due for hearing on the same day i.e. 8th January 2021. Hence this Court directed that the Trial Court shall proceed with framing of charge expeditiously and the accused be produced before the Trial Court on the next date of hearing. This application then proceeded for hearing on 19th January 2021. Learned APP had pointed out that Trial Court had issued production warrant to produce the applicant on the next date of hearing. This Court again directed that Trial Court may proceed with framing of charge on the next date of hearing. This application thereafter came up for hearing on 10th February 2021. It was pointed out that charge could not be framed. The accused who were in jail were not produced. Only one accused who was on bail was present before the Court. Some of the

accused have preferred application for transfer of jail. Hence it was again directed that the accused be produced before Trial Court on 20th February 2021 which is next date of hearing. The application was thereafter listed on 25th February 2021 and the same was adjourned to 10th March 2021. Thereafter again this application was adjourned to 23rd March 2021 since charge was not framed. Learned counsel for applicant had submitted that one of the accused had also preferred application for discharge and the charge has not been framed by the Court. Thus, from time to time, it appears for some reason charge could not be framed. The circumstances are such that the applicant has continued to be in custody from 28th November 2016. The record does not indicate that applicant has delayed trial in any manner. The applicant do not have any criminal antecedents. He is in jail for last four and half years. The case of the applicant can be distinguished from other accused. It is alleged that the applicant had handed over the chit containing address of the victim. The handwriting expert's opinion has been received and it would be a matter of trial to establish whether it is the handwriting of applicant. Applicant has not played any role in threat of extortion. Considering all these aspects, further detention of the applicant is not necessary.

9. Hon'ble Supreme Court in the case of Union of India Vs. K.A.Najeeb (supra) has observed that accused therein was in jail for about five years. Several witnesses were yet to be examined. The order relied upon by learned counsel for applicant granting bail to the applicant in Bail Application No.2613 of 2019 indicate that accused therein was prosecuted for offence u/s 302 r/w 115 of IPC. This Court granted bail to the applicant therein considering that co-accused was granted bail. Hence trial is likely to take too long. In

view of above, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No. 70 of 2016 registered by Anti Extortion Cell, Crime Branch, CID, on executing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Anti Extortion Cell, Crime Branch, CID once in three months on first Saturday of the month between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence;
- (v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.50,000/- for eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

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