

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 687 OF 2020

Vishal Ashok Kumar Tanwani .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. Prashant Pandey a/w Mr. D Jain, Mr. Irfan, Nikitesh for the applicant.
Smt. Veera Shinde, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 11th JULY, 2022

P.C:-

1 The applicant came to be arrested in connection with CR No. 211 of 2018 registered with Kurar Police Station, which initially accused him of the offence punishable under section 379 read with 34 of IPC. On 30 June, 2018, he was charged for offence punishable under section 395 i.e. committing dacoity. The subject CR came to be registered on a complaint filed by one Devendra Jalan who alleged that on 6/04/2018 he along with his son were carrying a sum of Rs. 15,00,000/- in a leather bag and they hired one Auto-rickshaw. As per the complainant when the Rickshaw was being driven on the Western Express Highway, at the service road near a public toilet, a black

coloured motorcycle intercepted them and two persons riding the motorcycle entered into a squabble with the rickshaw driver and alleged him that he was driving his rickshaw on the wrong side. The complainant intervened and offered a justification. At that time, the motorcycle sped away from his right side and he noticed that the bag which was kept on his right side, was missing. This resulted in registration of the offence under section 379 of the IPC. The statement of the driver, who was driving the auto rickshaw is also recorded and, on completion of investigation, the charge-sheet has been filed.

2 The applicant is charged under section 395 which prescribe the punishment for dacoity and the person, who commits a dacoity can be punished for imprisonment for life or for rigorous imprisonment, which may extend to 10 years. The necessary ingredients for dacoity being robbing a person's property, by voluntarily causing or attempting to cause threat or hurt or fear of instant death, the same is however, conspicuously absent here. As per the version of the complaint, the bag containing the amount was picked up by the persons on the motorcycle and they fled away with the same.

Prima facie, it can be seen that no offence under section 395 is made out and the accusations initially faced by the applicant under section 379 was the right course to be adopted.

In any case, on perusal of the charge-sheet, it can be seen that the allegation was levelled against two unknown persons.

The learned APP fairly state that test identification parade was conducted and the complainant as well as the driver of the auto rickshaw were asked to identify the accused person, but the applicant has not been identified.

3. In the wake of the aforesaid material, the incarceration of the applicant is unnecessary. Ultimately, he may be facing the trial, in the wake of the charge-sheet. The learned APP also state that he has several other antecedents and the applicant is also involved in similar offences in the past. I have perused the list of the offences registered against him, and it can be seen that in the year 2018 the applicant is accused of offences punishable under section 394 and 395. In the year 2017 he is arraigned as an accused in a crime which invoke section 379 and an offence is also registered in the year 2013 under section 359. Though the applicant has antecedents, in absence of any clinching material against him in the charge-sheet, as far as the present C.R. is concerned, merely on the ground that he has antecedents, he cannot be kept behind the bar, indefinitely. Hence the following order.

ORDER

- (a) The Applicant Vishal Ashok Kumar Tanwani shall be released on bail in CR No. 211 of 2018 registered with Kurar Police Station, on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.

- (b) The Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicants shall report to the police station on first thursday of every month till framing of charge and thereafter abide by the direction being imposed upon him by the concerned Court.

4 The application is allowed in the above terms.

(SMT. BHARATI DANGRE, J.)