

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

CRIMINAL BAIL APPLICATION NO. 2694 OF 2022

Alishan @ Rafiq Shaikh

...Applicant

Versus

The State Of Maharashtra

...Respondent

....

Ms. S. P. Parulekar, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th OCTOBER, 2022.

PER COURT:

1. The applicant was arrested on 10th July, 2021 in connection with C.R.No.143 of 2021 registered at Bund Garden Police Station, Pune for the offence punishable under Sections 395, 397, 323, 506 read with Section 34 of Indian Penal Code, and Sections 3(1)(ii), 3(4) of Maharashtra Control of Organised Crime Act (hereinafter referred to as “M.C.O.C. Act” for short).

2. The case of the prosecution is that, Vijay Pandurang Jadhav is the first informant. On 23rd June, 2021 at about 4.00 a.m., the first informant came from his native place at Pune Station. He was

waiting for Bus to go to his residence. One Rickshaw came towards him. Person sitting as passenger in Rickshaw asked him, whether he can be dropped at his destination. The complainant boarded in Auto Rickshaw. The other persons who pretended to be passenger in Rickshaw, gave a call to some person. The driver of Auto Rickshaw took complainant him to place of incident. On the way, the other person boarded Auto Rickshaw. The first informant was threatened. The bag from his possession was snatched. There were some documents and cash of Rs.600/- in the bag.

3. Statement of one of witnesses Irshad was recorded on 26th June, 2021. He is the vendor. According to him, the accused came in two Auto Rickshaws and they were together for sometime. The applicant came to the spot in one Auto Rickshaw. The case of the prosecution is that, the accused was seen by the witness together after the alleged incident. Hence, inference is drawn that all of them were involved in the offence.

3. Learned advocate for the applicant submitted as under :

- i) The applicant is in custody from the date of arrest ;
- ii) There are no criminal antecedents against the applicant ;

iii) The applicant is not involved in any other criminal activities with the Gang Leader ;

iv) Test Identification Parade was conducted after 4 months from the date of the incident ;

v) There are discrepancies in the Test Identification Parade ;

vi) Taking into consideration the statement of Irshad, the applicant is the person who was accompanying the other persons who came to the spot in second Auto Rickshaw. Thus, there is reason to believe that he was amongst person who were involved in committing robbery ;

vii) The statement of the complainant was not recorded after Test Identification Parade. Therefore, overt act played by the applicant is not clear.

4. Learned APP submitted that provision of M.C.O.C. Act are invoked against applicant and other accused. The applicant was amongst the co-accused. It is not necessary to specify the overt act. The applicant has been identified in the Test Identification Parade. There is recovery of the articles from the co-accused. The applicant has participated in the present crime with the Gang Leader, against

whom 12 cases are registered.

5. At the outset, it can be noted that the applicant is not involved in any other case with the Gang Leader or with the co-accused. There is no recovery from the applicant. The statement of Irshad was recorded on 26th June, 2021. Admittedly, he is not the eye witness to the incident. Although, the applicant was arrested on 10th July, 2021, Test Identification Parade was conducted after a period of 4 months. The statement of complainant was not recorded after Test Identification Parade. There is nothing on record to show that, except the present case the applicant was involved in any case or participated in criminal activities as member of crime syndicate. There are no other cases registered against applicant. He is in custody from the date of arrest. Considering all these aspects, bail can be granted to the applicant. The rigours under Section 21 (4) would not be ground to deny bail to applicant. Hence, following order :

ORDER

- i.** Criminal Bail Application No. 2694 of 2022 is allowed;
- ii.** The applicant is directed to be released on bail in connection with C.R. No. 143 of 2021, registered at Bund Garden Police Station, Pune on executing P.R. Bond in the

sum of Rs.25,000/- with one or more sureties in the like amount;

iii. The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.

iv. The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order ;

v. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)