

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2898 OF 2022

Iqbal Afzal Khan @ Pappu ... Applicant

V/s.

State of Maharashtra ... Respondent

.....
Ms. Sana Shaikh i/b. Kalam Shaikh, Advocate for Applicant.
Mr. Amit A. Palkar, APP for Respondent-State.
.....

CORAM : G. A. SANAP, J.

DATE : 3rd NOVEMBER, 2023

P C:-

1. The applicant/accused No.2 in Crime No. 128 of 2021 registered with Malwani Police Station, Mumbai for the offences punishable under Sections 399, 402 read with 34 of Indian Penal Code (for short "IPC") and under Sections 4 and 25 of Arms Act and under Sections 37(1)(a), 135 and 142 of Maharashtra Police Act has made this application for bail.

2. Heard learned Advocates for the parties. Perused record and proceedings.

3. It is the case of the prosecution that the accused persons were apprehended when they were preparing for committing the

dacoity. The weapon and chilly powder was seized from the possession of the applicant/accused No.2.

4. Learned Advocate for applicant /accused No.2 submitted that the Trial Court has rejected his bail application considering his criminal antecedents. Learned Advocate pointed out that accused No.4 has been released on bail by the Trial Court. It is pointed that accused No.4 had also criminal antecedents. Learned Advocate submitted that applicant /accused No.2 has been in jail for last 32 months. It is submitted that after filing charge-sheet, yet charges have not been framed. Therefore the detention of the applicant/accused No.2 for indefinite period is not warranted. Learned Advocate submitted that accused is ready to abide by the conditions that may be imposed by the Court.

5. Learned APP submitted that there are nine other offences registered against applicant/accused No.2 under Indian Penal Code and under the Narcotic Drugs and Psychotropic Substances Act. Learned APP submitted that considering the criminal antecedents of the accused, he is not entitled to get bail. Learned APP submitted that the possibility of the accused committing the identical offences on his release on bail cannot be ruled out. Learned APP further submitted that possibility of tampering with prosecution evidence cannot be ruled out in case of the release of the accused on bail.

6. It is seen that in the crime, there are five accused. Accused No.4 has been released on bail. The perusal of the charge-sheet would show that the role attributed to the accused No.4 and accused No.2 is more or less identical. It is also seen that the accused No.4 has a criminal antecedents. It is to be noted that since role attributed to the accused No.2 is similar to the accused No.4 the ground of parity would be available to him. The next important question is whether he can be denied bail on account of his criminal antecedents. It is true that apart from this crime, nine other crimes are pending against him. Accused has been in jail for last 32 months. The charges have not been framed despite filing charge-sheet. The trial may take its own time for completion. In the factual background, in my opinion, on the basis of his criminal antecedents, bail cannot be denied to him. The incarceration of the accused in this manner may amount to pretrial conviction. In the facts and circumstances, I am of the opinion that the accused has made out a case for bail. The apprehension put forth by the learned APP can be taken care of by imposing appropriate conditions.

7. Accordingly, I proceed to pass the following Order :

ORDER

- (i) Applicant/accused No.2 - Iqbal Afzal Khan @ Pappu be enlarged on bail in Crime No. 128 of

2021 registered with Malwani Police Station, Mumbai on furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with solvent surety in the like amount.

- (ii) Applicant shall attend the Malwani Police Station, Mumbai on 1st Monday day of every month between 11:00 a.m. and 2:00 p.m.
- (iii) Applicant shall not in any way tamper with the prosecution evidence.

8. The Bail Application is accordingly disposed of.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date: 2023.11.04
16:38:46 +0530

(G. A. SANAP, J.)