

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3546 OF 2022

Fahim Mohammad Shaikh ... Applicant

V/s.

State of Maharashtra ... Respondent

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Mr. Taraq Sayed i/b. Mr. P. S. Mishra, Advocate for Applicant.
Mr. Y. Y. Dabke, APP for Respondent-State.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 12 OCTOBER, 2023

P C:-

1. By this Application, Applicant is seeking bail in C.R.No. 142 of 2021 registered with Malad Police Station, Mumbai for the offence punishable under Sections 392 read with 34 of Indian Penal Code (for short "IPC") and Sections 3(1)(ii), 3(2), 3(4) of Maharashtra Control Organized Crime (for short "MCOC Act").

2. It is the prosecution's case that on 27.03.2021, after attending her relatives, when informant was returning by rickshaw at around 11:10 to 11:15 p.m., two motorcyclists approached near the rickshaw. The pillion-rider grabbed the purse of informant and was

pulling it forcefully inspite of informant's protest. He succeeded in snatching the purse as it handle was cut down. The motorcyclists then fled away with the purse of informant.

3. It is the contention of learned Counsel for the Applicant that Applicant is behind the bar for more than two years and seven months. The police have applied Section 392 of Cr.PC. against the Applicant which is not proper. At the most the act of the Applicant falls under Section 379 of IPC. As Applicant had not threatened or caused voluntarily hurt or not used any weapon while committing theft, learned Counsel further submitted that the act of Applicant does not fall under continuation of unlawful activity, hence MCOC Act would not be applicable. Investigation is completed and charge-sheet has been filed. Hence, requested to allow the Application.

4. It is contention of learned APP that Applicant is habitual offender. There are antecedents against him. Applicant had tried to snatch the purse from the hands of complainant when she was sitting in rickshaw. The rickshaw was moving while snatching the purse, hurt / injury may have been caused to the complainant hence Section 392 of IPC was applied against the Applicant. Applicant is identified by the complainant and there is recovery of camera and Rs.300/- at the instance of Applicant. There is *prima*

facie against the Applicant. Hence, requested to reject the Application.

5. I have heard both the learned Counsel. Perused the FIR and charge-sheet. Section 392 of IPC is applied against the Applicant. The punishment under this Section is upto 10 years. Applicant is behind the bar for two years and eight months, yet trial has not been started. It may take time to conclude the trial. Investigation is completed and charge-sheet has been filed.

6. Considering the above facts, I pass following Order:

ORDER

- (i) Applicant be enlarged on bail in C.R.No. 142 of 2021 registered with Malad Police Station, Mumbai, on executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (ii) Applicant shall attend the concerned police station once in a month i.e. on first Monday between 11.00 a.m. to 3.00 p.m. till framing of charge.
- (iii) Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or

mobile details, if any, from time to time to the Investigating Officer.

- (iv) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

7. The Application is allowed in the aforesaid terms and is accordingly disposed off.

8. It is made clear that the above observations are made only for the purpose of granting bail and the Trial Court shall decide the case on its own merits in accordance with law and uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2023.10.23
17:00:17 +0530