

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

CRIMINAL BAIL APPLICATION NO. 3688 OF 2022

Pradhan Krushana @ Bhutya @

Bablya Subhash

Age : About 22 Years, Occu. : Labour,

R/at : Mharal Pada, Varap,

Tal. : Kalyan, District : Thane.

...Applicant

vs.

State of Maharashtra

[At the instance of Kalyan Taluka

Police Station]

...Respondent

Mr.Rohan Hogle i/b. Mr.Waseem I. Shaikh–Advocate for Applicant.

Mr.H.J.Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 21st APRIL, 2023

P. C. :-

1. The present Applicant is Accused No.5 as per the charge-sheet filed for the offences punishable under Sections 395, 394, 506 read with 34 of Indian Penal Code, 1860 [“IPC”]. It is filed by Kalyan Taluka Police Station in respect of complaint filed by one Suresh Sakharam Ubade on 20th June, 2021.

2. This is one more instance wherein the trial Court i.e. the Court

of Additional Sessions Judge has taken a rigid view while dealing with the Second Bail Application of present Applicant. His first Bail Application was rejected during pendency of investigation and after filing of charge-sheet, he again applied for bail. However, it was rejected by learned Additional Sessions Judge - Kalyan vide order dated 29th September, 2022.

3. It was observed that merely filing of charge-sheet does not amount to change in circumstance whereas filing of charge-sheet will not amount to diminishing the gravity of the offence. However, learned Additional Sessions Judge was expected to go into what are the merits of the matter on the basis of the materials collected during investigation and after perusing those materials, the learned Judge ought to have decided the Application. Instead of that, straightway he has rejected the Application.

4. Hon'ble Supreme Court in various matters have observed that the trial Courts should be cautious in dealing with the Bail Application and should not reject it mechanically instead peruse the materials and then take appropriate decision as per their conscience.

5. This court is aware that when the Bail Application is filed before this Court, this Court is not exercising the Appellate

jurisdiction but coextensive jurisdiction. However, the situation compels me to make these observations. I have made this observation only with the view that at least the learned Additional Sessions Judge should be careful that he is dealing with the liberty of an individual and liberty cannot be curtailed unless justified. I am of the clear view that considering the materials collected during investigation, the Applicant cannot be detained behind bar, hereinafter.

6. There is one more reason for making these observations. The two Co-accused are released on bail by the Court of Additional Sessions Judge - Kalyan presided over by different judge. Copies of those orders dated 14th of July 2022 passed in Criminal Bail Application No.1268 of 2022 and passed in Criminal Bail Application No.749 of 2022 dated 13th July, 2022 are annexed with this Application. It is not clear whether these orders were placed before the learned Judge who has rejected the Second Bail Application of this Applicant. Because, those two orders were passed earlier to rejection of Section Bail Application of this Applicant.

7. With the assistance of learned Advocate for the Applicant and learned APP, I have gone through the papers, I find that there is

absolutely no material to detain the Applicant during pendency of the trial.

8. It is true that the incident took place on 20th June 2021 at about 4.00 a.m., in the early hours on national highway no.61 which goes from Kalyan to Murbaad. The inmates of two trucks were robbed by in all 5 persons. Initially, the truck in which the First-Informant was travelling was robbed by 5 persons. There is different role assigned to these persons. Out of that, present Applicant is Accused No.5 and he along with Accused No.3, entered the truck from driver side and they have assaulted the First-Informant and the inmates with the help of wooden stick and consequently, Accused No.3 robbed Rs.3,500/- and mobile. Afterwards, the truck which followed the first truck came there and inmates were again robbed. So far as the second incident is concerned, there is no specific allegations against the present Applicant.

9. These 5 Accused persons were arrested on suspicion and after investigation, the charge-sheet is filed. It is annexed to the Application. With their assistance, I have perused it.

10. If entire charge-sheet is perused, no incriminating material is pointed out to me so far as this Applicant is concerned. There is a

recovery of mobile handset which was robbed. There is recovery of wooden stick used in an offence. There is further recovery of an amount of Rs.5,000/- in cash. However, none of these articles were seized at the instance of the present Applicant. There is a pen-drive which was seized during investigation. That pen drive contains C.C.T.V, footages and they were produced by witness Bhupendra Deshmukh. However, there is no transcription panchanama.

11. Considering all the materials, a case for grant of bail is made out. Furthermore, this Court has also granted bail to Farhan Yusuf Sayeed in Bail Application No.3411 of 2022 on 19th January, 2023. Its copy is placed on record. He is shown as Accused No.4. So, case for bail is made out.

12. At the same time, I would like the Registry to send the copy of this order to Learned Additional Sessions Judge Shri.Shaukat Gorwade who has rejected Second Bail Application and also to learned Additional Sessions Judge Shri. P.R. Ashturkar for information and for consideration in future. They are specifically sent for guiding them what should be the approach while dealing with the Bail Applications.

13. In view of that, following order is passed :-

O R D E R

- (i) The Application is allowed.
- (ii) The Applicant - Pradhan Krushana @ Bhutya @ Bablya Subhash in connection with FIR No.357/2021 with Kalyan Taluka Police Station, shall be released on bail on his furnishing P. R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The Applicant shall report to the Investigating Officer of the concerned Police Station twice in a month on every first and third Saturday, between 11.00 a.m. and 1.00 p.m., for one year.
- (iv) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant shall not tamper with evidence.
- (v) On being released on bail, the Applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

14. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

15. Application is disposed of in the aforesaid terms.
16. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]