

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

BAIL APPLICATION NO. 3545 OF 2022

Nafiz Kamaruddin	vs.	...Applicant
The State of Maharashtra		...Respondent

Mr. Ashif - Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 25th APRIL, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP

2. The present Applicant is accused no. 2 as per charge-sheet filed by Police of the Shahapur Police Station, in connection with C.R. No. 249 of 2022, registered on 13/06/2022. Initially, the F.I.R. is registered against the driver by name Ejaj Bismillah Ahmed of the trailer in question. By loading the steel, he was about to give delivery from Dindori Nashik to Navi Mumbai, Vashi. The first informant Anand Siyaram Singh runs a transport business. He was in touch with the driver. There was GPS installed in that trailer. For some time, he was in touch with the driver. The last location was at

Asangaon, Shahapur near Aamantran hotel. However, thereafter the owner could not locate the trailer. Even the mobile of the driver Ejaj was switched off. On 12/06/2022, he received a phone call from the driver and when asked the driver, he gave evasive answers about steel loaded in that trailer. The trailer was found near Mumbra, Shilphata.

3. The first informant realized that it is the driver who has committed criminal misappropriation of those steel, and lodged complaint and it was registered under Section 407 of the Indian Penal Code. The driver was also arrested.

4. My attention is invited on behalf of the Applicant to two remand reports, dated 14/06/2022 and on 16/06/2022. The driver was produced before the concerned Court. It is true that there is no reference of the name of the present Applicant. Even there is no reference of manner of the commission of the offence which was disclosed later on. Subsequently, Police have realized that the driver is not the real culprit, but there are other persons who have put a surveillance on the trailer and in fact they compelled the driver to take that trailer and finally they reached at Mumbra, Shilphata. From there, the steel was sold in the open market to one Sartaj

Mohammad Siddhik and later on, he sold to various local customers.

5. Accordingly, the report under Section 169 of the Criminal Procedure Code against the driver was submitted to the court of JMFC. The names in all more than 9 persons were disclosed. Five persons were arrested and they are charge-sheeted. Four are yet absconding.

6. Learned Advocate for the Applicant tried his level best to convince that the materials collected during investigation are not sufficient enough to continue detention of the present Applicant.

According to him, there are various inconsistencies in between the materials submitted alongwith charge-sheet. He also relied upon bail granted to arrested accused Sartaj Siddhik, by the Court of Additional Sessions Judge on 19/10/2022. Its copy is tendered on record and marked as 'Annexure-X'. According to the Applicant, his role and that of Sartaj is similar.

7. As against this learned APP submitted that there is plenty of materials showing the involvement of the Applicant. According to him there are two sets of the accused. One set consists of accused **who have visited the spot and others who have during the journey forcibly entered the trailer.** They have travelled in the Swift car which was

owned by one of the absconding accused. He is yet to be arrested and his car also yet to be seized. There is an allegation that the present Applicant has driven that trailer. In addition to that Call detail report is there. It suggests the presence of the Applicant at the spot.

8. According to the learned APP, the role alleged against the accused Sartaj is different. It relates to selling of the scrap after trailer was parked near Mumbra, Shilphata. It is submitted that in the parade, the driver has identified the present Applicant though the documents are not annexed to the charge-sheet, later on they were collected.

9. Considering the fact role of this Applicant is different from the accused Sartaj, the benefit of the parity cannot be granted to him. Sartaj played role while selling that steel. Whereas the present Applicant was very much there at the spot from where trailer was forcibly driven by this Applicant. He has been identified by the driver in the parade.

10. It is not that every time role should be similar. Even though there may not be recovery of the scrap, steel or the cash amount, he has played a major role in committing the offence. So no

case for bail is made out.

11. Learned Advocate for the Applicant tried to bring my attention to the few of the statements, they are on page nos. 75 and 76. It belongs to one Rashid Hussain Jawwad Hussain Faruqi and Mohammad Rizwan Karamhussain Khan. Those witnesses have said about the sell of the steel. Whereas the role of the Applicant is different, the applicant cannot claim any mileage out of those inconsistencies Hence bail application is dismissed.

12. It is true that the accused Applicant has got right to ask for speedy trial as he is behind bar since almost one year. The Court of Additional Sessions Judge, Kalyan is heavily overburdened. So instead of expediting trial, I think liberty can be granted to the Applicant to ask for bail, if trial will not start within period of two years from today.

13. Bail application is disposed of.

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.

[S. M. MODAK, J.]