

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 470 OF 2024

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SANTOSH
SUBHASH
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Yasin Ismail Chaudhary ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Sameer Khatib, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
API H. S. Pol, Thane GRP Mumbai, present.

CORAM: N. J. JAMADAR, J.
DATED: 2nd FEBRUARY, 2024

PC:-

1. Heard the learned Counsel for the parties.
 2. By this application under Section 439 of the Code of Criminal Procedure, 1973 ("the Code") the applicant seeks to be enlarged on bail in CR No.77 of 2023 registered with Thane Railway Police Station, Thane, for an offence punishable under Section 392 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 150(1)(e) of the Indian Railways Act, 1989.
 3. On the night intervening 13th and 14th January, 2023, the first informant was on his way to CSMT in a slow local train. While the train was about to leave Thane Railway Station, two person boarded the compartment in which the
- 1/5**
Order corrected as per order dtd.8/2/2024.

first informant was travelling. They robbed him of the bag which the first informant was carrying. As the train slowed down, the unknown robbers alighted from the running train. The first informant approached the police station and lodged the report of theft of gold chain, mobile phone handset and other valuables worth Rs.86,338/-.

4. The applicant was apprehended in CR No.74 of 2023. As the complicity of the applicant was allegedly revealed in this crime as well, the custody of the applicant was obtained. The prosecution alleges pursuant to the discovery made by the applicant, the stolen property came to be recovered.

5. The learned Counsel for the applicant submitted that the applicant is in custody since 17th January, 2023. The applicant was arrested on the basis of suspicion by obtaining his custody while he was arrested in another case.

6. The learned APP resisted the prayer for bail. It was submitted that on the night of occurrence the applicant was involved in four crimes. In three of those crimes, the applicant has pleaded guilty. Therefore, the complicity of the applicant is *prima facie* made out. Having regard to the

antecedents of the applicant, he does not deserve to be released on bail.

7. Evidently, the custody of the applicant in the instant crime was obtained by seeking production warrant under Section 267 of the Code of Criminal Procedure, 1973. The only material pressed against the applicant is the alleged discovery made by the applicant leading to the recovery of the property of which the first informant was allegedly robbed of.

8. The first informant had reported two unknown persons had robbed him of. *Prima facie*, it does not appear that the TI parade was held to establish the identity of the applicant as one of the persons, who had robbed of the first informant. In the absence of material to establish the identity of the applicant as one of the robbers, a *prima facie*, case can be said to have been made out in favour of the applicant. Whether the applicant was the person, who had robbed the first informant would be a matter for evidence and trial.

9. The applicant is in custody for more than one year. It is unlikely that the trial can be concluded within a reasonable period. The fact that the applicant has pleaded guilty in three other offences, may not constitute any impediment in

releasing the applicant on bail. However, stringent conditions are required to be imposed.

Hence the following order:

: O R D E R :

- (i)** Application stands allowed.
- (ii)** The applicant Yasin Ismail Chaudhary be released on bail in CR No.77 of 2023 registered with Thane Railway Police Station, Thane, on furnishing a P.R. Bond of Rs.30,000/- with one or more sureties in the like amount to the satisfaction of the trial court.
- (iii)** The applicant shall mark his presence at the Thane Railway police station on the first Monday of every month in between 10.00 am. to 12.00 noon for a period of two years or till conclusion of the trial, whichever is earlier.
- (iv)** The applicant shall not tamper with the prosecution evidence. 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.
- (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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]