

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 671 OF 2024

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
Date: 2024.05.06
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Nikhil Narendra Varma

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prabhakar Bhau Parse, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED: 3rd MAY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.271 of 2022 registered with Bhandup Police Station, for the offences punishable under Sections 307, 397, 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 135 read with Section 37 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. Eknath Gode, the first informant lodged a report with the allegation that on the night intervening 30th April, 2022 and 1st May, 2022 while he was sleeping in the parking lot of Bhandup Railway Station, two unknown persons accosted

him and accused him of being a thief. And when he remonstrated, one of them whipped out a knife and assaulted him and, thereafter, snatched away his mobile phone. The applicant came to be arrested on 4th May, 2022.

4. Mr. Parse, the learned Counsel for the applicant, submitted that in fact there are two statements attributed to the first informant, one recorded on 1st May, 2022 at 5.45 a.m. and the other on the very day without indicating the time of recording. However, there is a glaring inconsistency in the two statements. In the FIR, the first informant alleged that two unknown persons robbed him. Whereas, in the second statement of even date, the first informant alleged that there was only one robber. It was submitted that there is no material to connect the applicant with the crime, TI Parade was not conducted to establish the identity of the applicant.

5. The learned APP fairly submitted that TI Parade was not conducted to fix the identity of the applicant as the robber.

6. *Prima facie*, there appears inconsistency in the two statements attributed to the first informant, on the very day. It does not appear that the second statement was recorded as a supplementary statement. In any event, the inconsistency,

prima facie, dents the prosecution. Since the alleged robber was unknown to the first informant, the investigating agency could have been well advised to hold a TI Parade to fix the identity of the applicant as the robber. There is *prima faice* no material to establish the identity of the applicant as the very person, who assaulted and robbed the first informant.

7. The applicant has been in custody since 4th May, 2022. It is unlikely that the trial can be concluded within a reasonable period. In the backdrop of the nature of the material pressed into the service of the applicant, the further detention of the applicant appears wholly unwarranted. Hence, I am inclined to allow the application.

8. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.271 of 2022 registered with Bhandup Police Station, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Bhandup Police Station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is

earlier.

- (iv) The applicant shall not tamper with the prosecution evidence in whatsoever nature. 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.]