

Sayali Upasani

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

BAIL APPLICATION NO. 1536 OF 2024

Shadab Hussain Shaikh

...Applicant

Vs.

The State of Maharashtra

...Respondent

**SAYALI
DEEPAK
UPASANI**

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2024.04.16
11:14:50 +0530

Mr. P.R. Dave with Ashray P.. Dave and Anish S. Jadhav, for
Applicant.

Ms. Ranjana D. Humane, APP for State/Respondent

Mr. Santosh Khandekar, PI, Nagpada Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 10th APRIL, 2024

PC:-

1) Heard the learned Counsel for the applicant and the
learned APP for the State.

2) The applicant, who is arraigned in CR No. 310 of 2023,
registered with Nagpada Police Station, for the offences
punishable under Sections 170, 341, 347, 363 and 395 of the
Indian Penal Code, 1860, has preferred this application to
enlarge him on bail.

3) On 7th April, 2023, at 8.45 pm, Suleiman Ansari, who works with the first informant – Tamjeed Motiwala, to collect the amounts from the customers, reached Potiya Building, where his employer resides. Four persons accosted him. They represented that they were police personnel. Suleiman was forced to sit in a Maruti Van. His mobile phone handset was snatched away. After a while, those persons took away the bag containing the cash amount, which the victim was carrying. Near Aanik Depo, Chunabhatti, the vehicle was stopped and the victim was thrown out of the car. The first informant upon being apprised of the incident approached police and lodged the report, alleging that the victim was robbed of a cash amount of Rs.25,00,000/-.

4) The applicant came to be arrested on 10th April, 2023. During the course of the investigation, the applicant made discovery leading to recovery of cash of Rs.1,75,000/- from the residence of the applicant, at Pune. The applicant was identified in the test identification parade by the victim.

5) Mr. Dave, the learned Counsel for the applicant, submitted that the recovery is shown to have been made after about 8 days of the arrest of the applicant. The test identification parade was

conducted after two months thereof. In the test identification parade, the victim did not ascribe any reason which facilitated him to identify the applicant as one of the persons who committed the dacoity. Therefore, having regard to the period of incarceration and the fact that the rest of the co-accused have been released on bail by the Court of Session, the applicant be enlarged on bail.

6) The learned APP resisted the prayer for bail. Attention of the Court was invited to the memorandum of discovery leading to the recovery of the cash amount. It was submitted that as the victim was robbed by the applicant and the co-accused by impersonating themselves as police personnel, the offence is of grave nature. It was further submitted that the applicant has antecedents. Therefore, the applicant does not deserve to be enlarged on bail.

7) I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Evidently, the victim was abducted by unknown persons. The victim states that few of the persons, who had abducted him were wearing face masks. The incident does not seem to have lasted for a long time. Though in the FIR, the victim has described the

features of the persons, who had allegedly abducted him, yet the memorandum of test identification parade does not indicate that the applicant was identified with reference to those features, nor does the supplementary statement of the victim after the test identification parade seem to have been recorded.

8) In the backdrop of the nature of the accusation, the fate of the prosecution case would hinge on the identity of the applicant as one of the robbers. The recovery of a sum of Rs.1,75,000/-, in the context of the allegations that the victim was robbed of Rs.25,00,000/-, does not seem to have such incriminating tendency as to sustain the weight of the accusation. The identity of the applicant as one of the robbers would be a matter for adjudication at the trial. I am, therefore, persuaded to allow the application.

9) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 310 of 2023, registered with Nagpada Police Station, for the offences punishable under Sections 170, 341, 347, 363 and 395 of the Indian Penal Code, 1860, on furnishing a P.R.

Bond in the sum of Rs30,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Nagpada Police Station on the first Monday of every alternate month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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.

[N. J. JAMADAR, J.]