

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2154 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Afsar Jafer Khan @ Pappu ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Ashish Shukla, i/b Prachish Shukla, for the Applicant.
Mrs. Geeta Mulekar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 12th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.116 of 2021, registered with Oshiwara Police Station, Mumbai, for the offences punishable under Sections 394, 397, 326, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code"), seeks to be enlarged on bail.
3. The gravamen of indictment against the applicant and co-accused Arif Khan, who has since been released on bail, is that on 13th March, 2021 while the first informant was in the shop of Mr. Ramesh Warkari, the applicant and two unknown assailants accosted the first informant. The applicant was armed with a bamboo stick. The applicant gave a blow by

bamboo stick on the head of the first informant. Co-accused Arif Khan assaulted the first informant by means of iron rod. Mahesh Patel, the friend of the first informant was wrongfully restrained. When he tried to come to the rescue of the first informant the applicant threatened to cause harm to him. Subsequently, the applicant and the co-accused robbed the first informant of cash amount of Rs.10,000/-, two mobile phone handsets, gold chain, gold rings, bracelet and wrist watch.

4. The learned Counsel for the applicant submitted that the applicant has been falsely roped in. There is a material discrepancy in the version of the first informant and Mahesh Patel. Mahesh Patel is not a witness to the alleged robbery. It is further submitted that co-accused Arif Khan, who had relatively major role in the alleged robbery, has been granted bail by the Court of Session. Thus, the applicant is also entitled to exercise of the discretion.

5. The learned APP resisted the application. It was submitted that there is direct evidence against the applicant. Moreover, the applicant is a history-sheeter and there have been 25 offences registered against the applicant.

6. The learned Counsel for the applicant joined the issue by submitting that out of those crimes in 20 cases the applicant has been acquitted.

7. I have perused the allegations in the FIR as well as the statement of Mahesh Patel. There has been no discovery at the instance of the applicant. The question as to whether the applicant had robbed the first informant, in the facts and circumstances of the case, appears to be a matter for adjudication at trial. In any event, there does not seem to be much qualitative difference between the role attributed to the applicant and co-accused Arif Khan, who has been released on bail. The applicant is in custody since 14th May, 2021. It is unlikely that the trial can be completed in a reasonable time. The apprehension on the part of the prosecution can be taken care of by imposing conditions on the applicant.

8. Hence, the following order.

: O R D E R :

- (i) The application is allowed.
- (ii) The applicant Afsar Jafer Khan @ Pappu be released on bail in CR No.116 of 2021, registered with Oshiwara Police Station, Mumbai, on furnishing a P. R. Bond of Rs.30,000/- with one or more sureties in the like

amount.

- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every alternate month in 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. 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 stay away from Goregaon and Oshiwara Police Station for the period of one year save and except attending the Police Station on the scheduled date.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) 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 disposed.

[N. J. JAMADAR, J.]