

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2589 OF 2023

Shashikant @ Babubhai Chandrakant ...Applicant
Kolwalkar

Versus

The State of Maharashtra ...Respondent

Ms. Sheeba Khan with Nizamuddin Khan with Arshad
Qureshi and Saba Khan, for Applicant.

Mrs. G. P. Mulekar, APP for State/Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 9th FEBRUARY, 2024

PC:-

- 1) Heard the learned Counsel for the applicant and the learned APP for the State.
- 2) This is an application for bail in connection with C.R.No.911 of 2021 registered with Andheri Police Station for the offences punishable under Sections 120B, 379, 397 read with Section 34 of the Indian Penal Code.
- 3) The first informant lodged a report with the allegations that, on 19 July 2021, while he was travelling in a BEST Bus

along with a bag containing gold ornaments, he heard commotion. People were shouting that the thieves were decamping with stolen bag. The first informant requested the driver of the bus to stop the bus. He chased the person who had fled away along with the bag. However, the said person made good his escape. The first informant thus lodged a report to the effect that a bag containing 77 gold bangles worth Rs.46,50,000/- was stolen by unknown person, whose features were described by the first informant.

4) On 21st July 2021, a supplementary statement came to be recorded. In the said supplementary statement, the first informant alleged that while he was chasing the thieves, a person accosted him and by pointing out a revolver, threatened him not to chase the said thief lest he would be killed. Therefore, he stopped chasing the said thief. Thereupon, the offences punishable under Sections 120B and 397 of the Indian Penal Code came to be added.

5) The applicant came to be arrested on 1st August, 2021.

6) The learned Counsel for the applicant submitted that the applicant has been falsely roped in. The learned Counsel invites the attention of the Court to the orders passed by this Court releasing the co-accused Shaitansing Motising Rajput, Amin

Mohammad Shaikh and Vijaykumar Fulchand Gupta on bail. It was submitted that the applicant is similarly situated and deserves to be enlarged on bail.

7) The learned APP resisted the prayer for bail. It was submitted that a part of the stolen property came to be recovered at the instance of the applicant. Therefore, the applicant does not deserve to be released on bail.

8) The learned Counsel for the applicant submitted that there is no nexus between the gold which has allegedly been recovered from the possession of the applicant and the stolen properties.

9) The learned APP further submits that there are antecedents of the applicant. The learned Counsel for the applicant joined the issue by canvassing a submission that out of five crimes, the proceedings arising out of three crimes have been disposed of and the rest of the proceedings are subjudice.

10) Prima facie, it appears that the first informant had initially lodged a report of theft by an unknown person, while he was travelling in a bus. The allegations of robbery appeared to have been made after about 10 days of the alleged occurrence. Prima facie, the aspect of delay in making the allegations of robbery bears upon the veracity of the claim of first informant and would, thus, be a matter for trial.

11) The question as to whether the property which has been recovered at the instance of the applicant fromed part of the property of which the first informant was allegedly robbed, would also be a matter for adjudication at the trial.

12) The applicant has been in custody since 1st August, 2021. It is very unlikely that the trial can be concluded in the near future. Therefore, having regard to the period of incarceration as well as the peculiar facts of the case, I am inclined to exercise discretion in favour of the applicant.

13) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The Applicant – Shashikant @ Babubhai Chandrakant Kolwalkar be released on bail in C.R.No. 911 of 2021 registered with Andheri Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Andheri Police Station on first Monday of every month in between 11 am to 1 pm till the conclusion of the trial.

(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.

[N. J. JAMADAR, J.]