

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3203 OF 2023

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Altaf Hanif Shaikh @ Mental

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Fakhruddin Khan a/w. Mr. Salman Palasara, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. Chandrakant Gharge, PSI, Dindoshi police station.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 24 2024

P.C.:

1. The applicant who is arraigned in C.R. No.107 of 2023 registered with Dindoshi police station for the offences punishable under sections 397, 506(2) and 504 of Indian Penal Code, 1860 and sections 37(1)(a) read with 135 and 142 of Maharashtra Police Act, 1951 seeks to be enlarged on bail.

2. The applicant was externed under the externment order dated 24th January, 2023 from the districts of Mumbai City and Mumbai Suburban, District Thane and the Talukas namely Vasai, Palghar, Dahanu, Talsari of Palghar District, and Raigad, Panvel and Karjat Talukas for a period of two years. Yet, the applicant without obtaining the prior permission of the competent authority, came at Santosh Nagar, Goregaon, Mumbai(E) and robbed the first informant of cash amount of Rs. 5,000/-, a wallet, documents and a

mobile phone handset, on the point of chopper, and also attempted to cause hurt by means of the said chopper in the said act of robbery. The applicant also threatened the first informant out of his life.

3. Mr. Khan, the learned counsel for the applicant, would urge that even if the prosecution case is taken at par, an offence punishable under section 397 of the Penal Code cannot be said to have been *prima facie* made out. To lend support to the submission that in the facts of the case the offence under section 397 of the Penal Code can not be made out, the learned counsel placed reliance on a decision of the Supreme Court in the case of **Mohammad Wajid and Anr. vs. State of U.P. and Ors.**¹ wherein the Supreme Court observed that ordinarily if violence or hurt is caused at the time of theft, it would be reasonable to infer that the violence or hurt was caused for facilitating the commission of the theft or for facilitating the carrying away of the property stolen or for facilitating the attempt to do so. But there may be something in the evidence to indicate that hurt or violence was caused not for this purpose but for a different purpose.

4. The learned counsel further submitted that the alleged stolen property has been recovered. Investigation is complete for all intent and purpose. Further detention of the applicant is, therefore, not

¹ 2023 LiveLaww (SC) 624.

warranted. The learned counsel for the applicant submitted that the fact that there are antecedents of the applicant cannot be a ground to deny the relief of bail. The applicant therefore be released on bail subject to stringent conditions. Attention of the Court was invited to an order passed by this Court in the case of **Raosaheb Patole v s. The State of Maharashtra, B.A. No. 373 of 2011 dated 24th March, 2011** wherein this Court had imposed the condition of daily attendance at the police station.

5. Mr. Agarkar, the learned APP, contested the prayer for bail. Inviting the attention of the Court, the allegations in the FIR which, according to learned APP, squarely incriminate the applicant in as much as the applicant had attempted two blows by means of chopper while robbing informant of his wallet and mobile phone hand set. Mr. Agarkar, submitted that a clear case which falls within the ambit of section 397 of the Penal Code has been made out. Mr. Agarkar laid emphasis on the fact that as many as 19 offences have been registered against the applicant.

6. The submission on behalf of the applicant that the case would not fall under section 397 of the Penal Code primarily rests on the premise that the first informant had not sustained any injury. That does not seem to be an essential ingredient of the offence punishable under section 397 of the Penal Code. Section 397 covers

the cases of robbery where the offender uses any deadly weapon as also attempt to cause death or grievous hurt to any person. In the case at hand, there are categorical allegations in the FIR that when the first informant tried to resist the attempt of the applicant to snatch away the wallet and mobile phone handset, the applicant attempted two blows by chopper. There are statements of witnesses who lend support to the claim of first informant. In addition, it is pertinent to note most of the stolen property came to be recovered in the search of the applicant.

7. It is true, in a given case, if there is no prima facie material to connect the accused with the offence, the antecedents by themselves do not justify denial of bail. However, the case at hand stands on a different footing. The applicant was under an externment order. In breach of externment order, the applicant came to the spot and allegedly committed robbery punishable under section 397 of the Penal Code.

8. In the backdrop of the antecedents of the applicant, the apprehension on the part of the prosecution can not be said to be unfounded.

9. I am, therefore, not inclined to exercise the discretion in favour of the applicant. Hence, the application deserves to be rejected.

10. The application stands rejected.

11. However, having regard to the period of incarceration and the punishment which the offence under section 397 of the Penal Code entails, the applicant shall have the liberty to revive the prayer in the event charge is not framed within a period of one year from the date of communication of this order.

12. 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.)