

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

CRIMINAL REVISION APPLICATION NO. 16 OF 2024

Jason Kishor Bhatia ...Applicant
Versus
State Of Maharashtra ...Respondent

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Mr. Kushal Mor a/w Mr. Rohan Chauhan, Mr. Rishab Khot i/by Mr. Marmik Shah, Advocate for the Applicant.

Mr. Y.Y. Dabake, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd JANUARY, 2024.

P.C.:

1. The Applicant impugns Order dated 5th April, 2023 passed by learned Additional Sessions Judge rejecting the application for discharge preferred by Applicant under Section 227 of Code of Criminal Procedure (Hereinafter referred to as 'Cr.P.C.)

2. The Applicant was arraigned as Applicant No.5 in Sessions Case No.7 of 2018. The case arises out of C.R. No.268 of 2016 registered with Juhu Police Station for offences punishable under Sections 452, 342, 392, 395, 397, 450, 506(2) r/w 34 of Indian Penal Code (for short 'IPC').

3. The case of the prosecution is that on 25th April, 2016 at about 15:00 hours, four unknown persons entered into

Sindhivinayak Building situated at Tata Compound Andheri West. They were armed with revolver and knife. They entered into the house of informant and threatened to kill him by showing the revolver and knife. The informant and others were detained in the house. The Accused committed robbery of gold ornaments as well as cash and mobile phones from the house. First Information Report (for short 'FIR') was registered. Accused were arrested. The Applicant was arrested on the basis of statement of the co-accused. Charge-sheet was filed.

4. Learned Advocate for the Applicant submitted that there is no legally admissible evidence against the Applicant. It is not the case of the prosecution that the Applicant was amongst the Accused who entered into the house of the informant and committed robbery. It is not the case of the prosecution that the Applicant was near the scene of offence at any point of time. During the course of investigation the memorandum statement of the Applicant was recorded, wherein it was allegedly stated that part of the amount concerned in the crime i.e. Rs.5,00,000/- was handed over to the Applicant by the co-accused Johnson. However, there was no recovery of the amount. The statement does not indicate that the disclosure relate to the recovery of cash amount concerned in the

crime. The statement of the Applicant which form part of the Panchanama and which is in the nature of confession is not admissible in evidence. There is no evidence to substantiate the involvement of the Applicant in the crime in any manner.

5. Learned APP submitted that the trial Court has rejected the Application for discharge. Investigation revealed involvement of the Applicant. During the course of investigation co-accused Johnson was arrested. The co-accused in his memorandum statement disclosed that Rs.5,00,000/- handed over to Applicant. Memorandum statement of Applicant disclosed that the Applicant had received the amount but he had spent it. *Prima facie* case is made out against the Applicant. Applicant cannot be discharged.

6. It is not disputed that the Applicant was not a member of the persons who had entered into the premises of informant and at the point of weapons threatened him and robbed the informant and his family members of valuable items and cash. There is no evidence of whatsoever nature to link Applicant with the robbery. The Panchanama recorded during the course of investigation which is the only circumstance relied upon by the prosecution would indicate that after the arrest the Applicant had purportedly made statement that some amount was handed over to him by the

co-accused Johnson. However, the disclosure does not lead to recovery of money. The statement reproduced in Panchanama cannot be read in evidence. It has no evidentiary value. It is not admissible in evidence. The prosecution is also relying on statement of co-accused that amount was handed over to Applicant. The statement under Section 27 does not relate to discovery of any relevant fact. Section 27 of Evidence Act permits proof of that part of statement of accused in custody of Police which results in the discovery of a relevant fact and of any other part of the statement which connects or tends to connect. The fact discovered with the offence charged. In fact the statement discloses the Applicant believed the money was from the advance received by his relative from construction project and he kept the same in safe custody. Amount was not recovered from Applicant. There is no evidence to conspiracy against Applicant. Although the stage of the case is framing of charge, in the absence of *prima facie* evidence, charge cannot be framed. The accused has to be discharged if charge is groundless. Hence, the Applicant is required to be discharge from the impugned proceedings.

ORDER

- i. Criminal Revision Application No.16 of 2024 is allowed;

- ii.** The Applicant is discharged from Sessions Case No.7 of 2018 passed by Sessions Court at Dindoshi (Borivali Division), Goregaon, Mumbai dated 5th April, 2023.
- iii.** Application stands disposed off.

(PRAKASH D. NAIK, J.)