

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4256 OF 2023

Chandrakant Raghu Awakirkar ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms. Asha Joshi a/w. Ms. Mallika Sharma, for the Applicant.
Ms. Ranjana Humane, APP, for the Respondent/State.
Mr. Sachin Tambe, PSI, MIDC, Police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 23, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No.283 of 2023 registered with MIDC, Mumbai police station for the offences punishable under sections 120-B, 364-A, 323, 504, 406 and 398 of Indian Penal Code, 1860 and section 37(1) read with 135 of Maharashtra Police Act, 1951 seeks to be enlarged on bail.
3. Anupkumar Shetty (the victim) was the lessee of hotel Veera Residency. Mahaveer Yadav (the first informant) was working as a Receptionist in the said hotel. In the month of July, 2022 the victim had given the said hotel to Vijay Awakirkar (accused No. 1) for conducting. In the month of December, 2022 the victim took back the said hotel from Vijay Awakirkar (accused No. 1). In connection with the said transaction, the Vijay Awakirkar (accused No. 1) claimed certain amount from the victim.

4. On 24th April, 2024 at about 3.15 pm Vijay Awakirkar (accused No. 1) accompanied by his four unknown associates had came to hotel Veera Residency and inquired about the victim. After the friends of the victim left the hotel at 5.00 pm, Vijay Awakirkar (accused No. 1) entered into the cabin of the victim and snatched away the mobile phone of the victim. Two of the unknown associates of Vijay Awakirkar (accused No. 1) also barged into the cabin and started to abuse and assault the victim. One of them took out a pistol and fired in the air. The other snatched away the leather bag which the victim was carrying. When the other staff of the hotel came thereat, Vijay Awakirkar (accused No. 1) and his associates restrained them by pointing out weapons and took away the victim with them. Vijay Awakirkar (accused No. 1) was armed with knife and the three associates of Vijay Awakirkar (accused No. 1) had pistols. Eventually, Vijay Awakirkar (accused No. 1) came to be apprehended along with the applicant when they had come to collect the ransom.

5. Ms. Joshi, the learned counsel for the applicant, submitted that neither the first informant, nor the victim had known the applicant from before. Only Vijay Awakirkar (accused No. 1) was named in the FIR. There is no material to show that the applicant was one of the unknown associates of Vijay Awakirkar (accused No.

1). The applicant has been implicated solely on the ground that he was allegedly found along with Vijay Awakirkar (accused No. 1), when the latter had come to collect ransom.

6. Ms. Humane, learned APP, resisted the prayer for bail. It was submitted that applicant was in touch with the Vijay Awakirkar (accused No. 1) and co-accused. The CDR of the applicant shows his location at the place from where accused No. 1 was apprehended.

7. I have perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

8. Evidently, the FIR was lodged against Vijay Awakirkar (accused No. 1) and his unknown associates. The first informant as well as the victim had described the features of those unknown associates of Vijay Awakirkar (accused No. 1). However, the memorandum of test identification parade indicates that neither the first informant, nor the victim, nor another witness, Sufandani Lashkar, identified the applicant as one of the associates of Vijay Awakirkar (accused No. 1) in the test identification parade. Prima facie, there is no material to establish the identity of the applicant as one of the associates of Vijay Awakirkar (accused No. 1). Nor anything could be recovered at the instance of the applicant to connect him with the alleged offences.

9. It is imperative to note that the pistols, which were found in

possession of the kidnappers, did not turn out to be firearms but toy guns. Nor the knife which was allegedly used by Vijay Awakirkar (accused No. 1) satisfied the description of the 'arms' under the Arms Act, 1959. Therefore, the charge for the offences punishable under Arms Act, 1959 was dropped.

10. Prima facie, it appears that there was a commercial transaction between Vijay Awakirkar (accused No. 1) and the victim. The victim was allegedly abducted to recover the amount which the victim allegedly owed to Vijay Awakirkar (accused No. 1).

11. In these circumstances, in the absence of any other material to connect the applicant with the alleged offences, especially in the backdrop of the fact that neither the victim, nor any of the alleged eye witnesses identified the applicant in the test identification parade, a prima facie case for exercise of discretion is made out. The applicant appears to have roots in society. The antecedents of the applicant do not appear to be such as to disentitle him from the relief of bail.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No.283 of 2023 registered with MIDC, Mumbai police station, on furnishing a P.R.

Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at MIDC, Mumbai police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)