

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.876 OF 2024**

Shakir Umarddin Mansoori	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. K.M.Tripathi, for Applicant.
Mr. A.A.Naik, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 13 AUGUST 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.121 of 2022 registered with Mira Road Police Station, for the offences punishable under Sections 120-B, 387 and 115 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.
3. Firoz Shaikh, the first informant, lodged a report on 21st March 2022 with the allegations that during the period 5th December 2021 to 20th March 2022 an unknown person called him from Mobile No.60146950130, identified himself as Javed Chikna and attempted to extort a sum of Rs.25,00,000/- by threatening to kill the first informant and his family members. The said caller had allegedly sent the photographs of the house and car of the first informant and the bio-data

of the first informant and his family members to instill a sense of fear in the first informant that the alleged extortionists were fully conversant with the situation of the first informant and his family members.

4. Qua the applicant, it is alleged that the applicant had instructed his brother – Javed Mansoori (A1) to snap photographs of the house and car of the first informant, and, thereafter, forwarded the same to Javed Chikna, the alleged extortionist. It is further alleged that the extortionist had forwarded two pistols and live cartridges to co-accused Mohammad Arafat Arif Lokhandwala. However, the said co-accused Mohammad Arafat came to be arrested and, therefore, the accused could not execute the conspiracy to kill the first informant and, thus, the offence of murder could not be committed in consequence of abetment. Hence, the charge for the offences punishable under Sections 120-B, 387 and 115 of the Penal Code, relating to the offence punishable under Section 302 of the IPC.

5. At the outset, the learned Counsel for the Applicant submitted that Javed Mansoori (A1) has been released on bail by this court by an order dated 4 January 2024. There is no material to indicate that the applicant had, in turn, forwarded the photographs of the house and car of the first informant to the alleged extortionist. The applicant has been in custody since 9 May 2022.

Therefore, the applicant deserves to be enlarged on bail.

6. Mr. Naik, learned APP, resisted the prayer for bail. It was submitted that there is adequate material to show that at the instance of the applicant, co-accused had snapped the photographs. Pursuant to the discovery made by the applicant, an empty box of the mobile phone handset, which was used by the applicant to forward the said photographs to the extortionist has been recovered. Therefore, the applicant does not deserve to be enlarged on bail.

7. While releasing Javed Mansuri (A1) on bail, this Court had observed, inter alia, as under :

“8. Prima facie taking and forwarding the photographs of the house of the first informant appears to be the only incriminating material pressed into service against the applicant. Evidently, the applicant had forwarded the photographs to Shakir, the co-accused and brother of the applicant. In the absence of any other material to show the complicity of the applicant, the question as to whether the applicant was also privy to the conspiracy to commit extortion would be a matter for adjudication at the trial. Since the person to whom the photographs were sent happened to be the brother of the applicant, the element of criminality in the act attributed the applicant would be required to be demonstrated.

9. In any event, the applicant is in custody since more than one and half year. Prima facie, the offence punishable under Section 115 relating to Section 302 of the Penal Code does not seem to be attributable to the applicant. The offence under Section 387 of the

Penal Code entails punishment, which may extend to seven years.

The investigation is complete for all intent and purpose. Charge-sheet has been lodged. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions.”

8. The gravamen of indictment against the applicant is that he had instructed Javed Mansuri (A1) to snap the photographs and forward the same to the applicant and, thereafter, the applicant had forwarded the same to the alleged extortionist. The determination of the guilt of the applicant would hinge on the proof of the said act, which in the circumstances of the case is the linchpin of the accusation against the applicant. It appears that the prosecution primarily rely upon the discovery allegedly made by the applicant. The memorandum of disclosure statement dated 11 May 2022 indicates that the applicant had volunteered to show the place wherefrom he had thrown the mobile phone handset in the creek. Thereafter, the applicant allegedly led the police party to the railway bridge over Bhayander creek and pointed out the place where he had thrown the mobile phone handset. The applicant, thereafter, led the police party to the house of his brother Javed. The applicant took out an empty box of the mobile phone handset which was used by the applicant to forward the photographs to the extortionist and was later on thrown in to the creek.

9. The aforesaid discovery, sought to be pressed into service against the applicant, is prima facie, fraught with infirmities. Firstly, it appears that nothing can be said to have been discovered pursuant to the alleged disclosure statement made by the applicant. Secondly, to fasten the liability for the recovery of the empty box and other articles, there does not appear to be any preceding disclosure statement. Thirdly, the nexus between the recovered articles and the alleged offences also needs to be established.

10. At any rate, the applicant has been in custody since 9 May 2022. Having regard to the role attributed to the applicant, further detention of the applicant as an under trial prisoner, appears unwarranted. In the backdrop of the nature of the accusation, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded to exercise discretion in favour of the applicant.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Shakir Umarddin Mansoori be released on bail in C.R.No.121 of 2022 registered with Mira Road 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 Mira Road Police Station, on first Monday of every alternate month between 11 am to 1 pm for a period of two years or till the 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) The applicant shall not enter the limits of Mira Road Police Station, for a period of two years or till the conclusion of the trial, except for attending the Police Station on the specified days.

(vi) 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.

(vii) The applicant shall surrender his passport before the jurisdictional Magistrate and shall not leave the country without prior permission of the jurisdictional Magistrate.

(viii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(ix) 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.)