

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

BAIL APPLICATION NO. 1405 OF 2024

Akbar Abdul Sattar Qureshi	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Sherali S. Khan a/w Mr. Nadeem Shaikh for the Applicant.
Mr. Kiran C. Shinde, APP for Respondent-State.
Mr. Kalidas N. Dhaware, PSI, L. T. Marg Police Station.

**CORAM: MANISH PITALE, J.
DATE : 26th AUGUST 2024**

P.C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail, as he was arrested in connection with FIR No. 0065 of 2023 dated 25th January 2023 registered at L. T. Marg Police Station, Birhanmumbai, for offences under Sections 392, 170 and 504 read with 120-B of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered against four unknown persons. During the course of investigation, the accused persons were arrested. Now there are total seven accused persons and the applicant is arraigned as accused No.4.

4. According to the statement of the informant, leading to

registration of the FIR, one lady and two male persons entered his office and posed as persons from the office of the Enforcement Directorate. They started asking questions, due to which the informant was scared. Thereupon, the said three accused persons started ransacking the office to look for documents and when they found a bag containing cash of Rs.10,00,000/-, they forcibly took the same away.

5. The informant claimed that initially he thought that the persons were genuinely from the office of the Enforcement Directorate. But, he later released that an FIR had been registered in the Police Station in respect of identical incident that occurred on the same day, wherein the shop of the victim was looted of cash and gold.

6. Thereupon, the informant reached out to the Police and this resulted in registration of the subject FIR.

7. The learned counsel for the applicant submitted that in the present case, according to the Investigating Officer, three persons, who reached the office of the informant, were accused Nos.1, 5 and 7. It is further brought to the notice of this Court that as per the documents on record and the Memoranda executed under Section 27 of the Evidence Act, 1872 concerning accused Nos. 1 and 5, amounts of Rs.5,00,000/- each were recovered from the two accused persons. Hence, the entire amount was recovered.

8. It was submitted that the reply filed before the Sessions Court shows that according to the Investigating Authority, the role attributed to the applicant was that he, along with another accused person, was keeping watch downstairs, when the accused Nos.1, 5 and 7 committed the aforesaid act in the office of the informant. It is submitted that there is nothing to connect the applicant with the incident in question. It is further brought to the notice of this Court that the applicant was arrested on 27th January 2023 in connection FIR No. 61 of 2023, also regarding an incident that allegedly took place on the same day and thereupon, the applicant was formally arrested in the present case on 8th February 2023. It is submitted that there is no material against the applicant. He has suffered incarceration for about 18 months and hence, this Court may consider enlarging the applicant on bail.

9. The learned APP vehemently opposed the prayer made in the present application. He submitted that statements of witnesses do indicate a link between the applicant and the incident in question. Specific attention of this Court is invited to statement of a witness, who claims that the applicant had borrowed a car belonging to the said witness, which was used for the incident that led to registration of the FIR No. 61 of 2023. It was submitted that since the said incidents took place on the same date within a short period of time, involvement of the applicant is evident. It is further submitted that one of the witnesses gave a statement that such an act was undertaken by the accused persons concerning his

shop also, but since cash and valuables were not available therein, the accused persons left and committed the other two crimes.

10. It is submitted that *panchanama* pertaining to CCTV footage concerning the said FIR No. 61 of 2023 has been executed, although the FSL report is awaited. Copy of the *panchanama* is tendered for perusal of this Court, to indicate that the same can be taken into consideration, while disposing of the present application.

11. This Court has considered the material on record and in the light of the submissions made by the learned counsel for the applicant and the learned APP, this Court is inclined to allow the application for the following reasons :

- (a) The FIR was initially registered against four unknown persons. Subsequently, seven persons have been arraigned as accused and even according to the Investigating Officer, the actual act of the accused persons posing as members of a team from the Enforcement Directorate and forcibly taking away cash of Rs.10,00,000/- is attributable to accused Nos.1, 5 and 7. No such role is attributed to the applicant, even according to the Investigating Authority.
- (b) In the affidavit in reply before the Sessions Court, it is claimed that the role of the applicant was that he, along with a co-accused person, was standing downstairs and

keeping a watch, when accused Nos. 1, 5 and 7 committed the aforesaid act. This is the only limited role attributed to the applicant and this Court finds substance in the contention that there is scant material to demonstrate the applicant having performed the aforesaid role of keeping a watch, while the co-accused persons committed the aforesaid act.

- (c) The statement of the witness, who claims that the applicant borrowed his car is also said to be connected with the FIR No. 61 of 2023 and not with the present crime.
- (d) The *panchanama* pertaining to CCTV footage concerning crime under FIR No.61 of 2023, only mentions two persons and describes the clothes that they were wearing, when the shop of the victim in the said crime was looted. Again, *prima facie*, there is nothing to link the applicant with the *modus operandi* allegedly adopted by the accused persons.
- (e) Significantly, the entire amount of Rs.10,00,000/-, i.e. Rs.5,00,000/- each was recovered from accused Nos.1 and 5 on the basis of memoranda executed under Section 27 of the Evidence Act, insofar as the said accused persons are concerned. Hence, there is no recovery from the applicant.

12. This Court is of the opinion that in the light of the aforementioned reasons, a *prima facie* case is indeed made by the

applicant in his favour. Other than the aforesaid FIR bearing No.61 of 2023 and the present FIR bearing No. 65 of 2023, there are no other criminal antecedents against the applicant and hence, this Court is inclined to allow the present application, considering the fact that the applicant has already suffered incarceration for about 18 months. The investigation has been completed and the charge-sheet is already filed.

13. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0065 of 2023 dated 25th January 2023 registered at L. T. Marg Police Station, Birhanmumbai, on furnishing P.R. Bond of Rs. 50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.
- (b) The applicant shall cooperate with the trial proceedings and he shall attend the trial Court on each and every date, unless specifically exempted by the trial Court.
- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place

on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

14. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

MANISH PITALE, J.