

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1623 OF 2024

Nilesh Shivbali @ Shivkumar Saroj ...Applicant
versus

State of Maharashtra ...Respondent

VISHAL
SUBHASH
PAREKAR

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VISHAL SUBHASH
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Date: 2024.06.20
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Mr. Vaibhav R. Gaikwad a/w. Mr. Atharva R.B. and Mr. Yash Naik,
for the Applicant.

Mr. Avinash Naik, APP for State.

Mr. Dattatray Kokare, PI, Vakola police station.

CORAM: N.J.JAMADAR, J.

DATE : JUNE 18, 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 396 of 2023 registered with Vakola Police Station for the offences punishable under Sections 395, 397, 386 of the Indian Penal Code and Sections 3 read with Section 25 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. The gravamen of indictment against the applicant and co-accused is that the applicant had the first informant to render massage services. When the first informant came near Vakola Junction, the applicant forced the first informant to accompany him to a room in Baba Homes Hotel on the point of a gun like weapon. Thereafter, the applicant called his unknown associates. The informant was robbed of a sum of Rs.95,000/-. Out of the said

amount, a sum of Rs. 50,000/- was credited to the account of the applicant by using Google App. Another sum of Rs. 35,000/- got credited to the account of Suresh Saroj, the co-accused through UPI. The applicant and the co-accused released the first informant after giving threat of dire consequences, if the matter is reported to police.

4. Mr. Gaikwad, learned counsel for the applicant submitted that the co-accused namely Vishal Singh (A2), who had allegedly used the pistol to put the first informant in fear, has been released on bail. Suresh Saroj (A4), in whose account a sum of Rs. 35,000/- was credited, has also been released on bail by this Court by an order dated 10th May, 2024. The applicant has been in custody since 8th July, 2023. Hence, the applicant deserves to be enlarged on bail.

5. In opposition to this, learned APP resisted the prayer for bail. It was submitted that the applicant was the principal offender. It was the applicant who had forced the first informant to go to Baba Homes Hotel on the point of a pistol. The applicant was also beneficiary of the extorted amount as a sum of Rs. 50,000/- was credited to the account of the applicant. Therefore, the applicant does not deserve to be enlarged on bail.

6. I have perused the report under section 173 of the Code

and the documents annexed with it. Prima facie, there is material to show that the applicant had forced the first informant to go to Baba Homes Hotel on the point of a pistol. There is also material to indicate that a sum of Rs. 50,000/- was got credited to the account of the applicant. However, at this stage, the fact that the investigation is complete for all intent and purpose cannot be lost sight of. The applicant has been in custody for almost a year. The co-accused have been released on bail. Vishal Singh (A4) who had allegedly pointed a pistol and put the first informant in fear of death, has been released on bail. Likewise, Suraj to whose account a sum of Rs. 35,000/- was credited has also been released on bail. The submission on behalf of the prosecution that the applicant was the mastermind may carry some substance. However, it does not appear that the pistol came to be recovered at the instance of the applicant. In the FIR, the first informant alleged that he apprehended that the applicant was carrying a pistol like substance.

7. I, therefore, find substance in the submission of Mr. Gaikwad that there is not much qualitative difference between the role attributed to the applicant and the co-accused who have been released on bail. The applicant has been in custody since 8th July, 2023. It is unlikely that the trial can be concluded within a

reasonable period. I am, thus, inclined to exercise the discretion in favour of the applicant.

Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Nilesh Shivbali @ Shivkumar Saroj be released on bail in C.R.No.396 of 2023 registered with Vakola 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 Vakola Police Station Mumbai on first Monday of every month between 11 am to 1 pm for a period of three 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) 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.

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

(vii) 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.)