

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1664 OF 2024

Subayya Rangnath Naidu	...	Applicant
Vs.		
State of Maharashtra	...	Respondent

Mr. Keshav Chavan i/b. Ms. Anita Marbhal for Applicant.
Mr. Tanveer Khan, APP for Respondent-State.
Mr. Dattatray S. Raikar, PSI, Byculla Police Station.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 06, 2024

P.C. :

1. Heard Ms. Chavan, learned counsel for the applicant and Mr.Khan, learned APP for the respondent-State.

2. The applicant has approached this Court seeking bail as he was arrested on 23.10.2022 in connection with FIR No.0761 of 2022 dated 20.10.2022 registered with Byculla Police Station, District - Mumbai, for offence under Sections 397 read with Section 34 of the Indian Penal Code, 1860 (IPC).

3. The FIR was registered against three unknown persons. Subsequently, the applicant and the co-accused persons were identified as the accused and taken into custody.

4. The statement of the informant reveals that, on the date and time of the incident, while he was sleeping in a petrol pump, where he was employed, three unknown persons assaulted him and took away amount of Rs.39,316/- from the cash box of the petrol pump.

5. The learned counsel for the applicant submits that there is nothing to link the applicant with the incident in question, as the informant

himself has stated that two of the unknown assailants were wearing helmets and the third assailant had tied a handkerchief on his face. According to the learned counsel for the applicant, the test identification parade is rendered meaningless in the backdrop of the initial statement given by the informant. It is submitted that the cash, allegedly taken away in the present case, was recovered from the co-accused person and by an order of the Magistrate dated 24.11.2022, interim custody of part of the recovered amount i.e. Rs.37,730/- was even handed over to the informant. It is emphasized that the applicant has undergone imprisonment for almost two years and therefore, he may be enlarged on bail.

6. On the other hand, the learned APP emphasizes upon the fact that the informant identified the applicant in the test identification parade. It is submitted that an iron rod, used for assaulting the informant, was recovered at the behest of the applicant. It is submitted that the applicant has a number of criminal antecedents, which is a fact, that may be taken into consideration.

7. This Court has considered the rival submissions. The application deserves to be allowed for the following reasons:-

- a. The FIR was registered against three unknown persons. The informant specifically stated that the two of the unknown persons, who assaulted him and took away the cash were wearing helmets and the third person had tied a handkerchief on his face. This *prima facie* indicates that the applicant could not have seen the faces of the three unknown assailants;
- b. In this backdrop, the informant's claim that he identified the applicant during the test identification parade *prima facie* appears to be doubtful;

- c. The cash allegedly taken away during the course of the incident was not recovered from the applicant but from the co-accused person;
- d. Almost the entire amount was recovered and it was made over to the informant by an order of the Magistrate;
- e. The applicant has already suffered incarceration for a period of almost two years and the trial is yet to begin although the charge has been framed. In other words, completion of the trial within the foreseeable future appears to be doubtful;
- f. Although there are number of criminal antecedents of the applicant brought to the notice of this Court, as regards most of the antecedents cited against the applicant, the remark is that 'information was not received'. In this regard, the learned counsel for the applicant has submitted that such FIRs were also registered against unknown persons and thereupon, the applicant appears to have been roped in. Be that as it may, the existence of criminal antecedents, in itself, cannot be a reason to reject the present application.

8. 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.0761 of 2022 dated 20.10.2022 registered with Byculla Police Station, District - Mumbai, on furnishing P.R. Bond of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;
- (B) The applicant shall not enter the jurisdiction of Byculla Police Station, during the pendency of the trial;

- (C) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted for reasons to be recorded in writing;
- (D) The applicant shall not tamper with the evidence of the prosecution. He shall not influence the informant, witnesses or any other person concerned with the case;
- (E) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of his active mobile number and residential address to the trial Court and update about the same, if there is any change.

9. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

10. At this stage, the learned counsel for the applicant prays for cash security till the surety is furnished.

11. The applicant is permitted to furnish cash security of Rs.50,000/- for a period of four weeks.

12. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)