

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3556 OF 2024

Vijay Bhairu Aavkirkar ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Vaibhav Gaikwad a/w. Yash Naik, for the Applicant.

Mr. H.J. Dedhia, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : SEPTEMBER 25, 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 the applicant (accused No. 1) for conducting. In the month of December, 2022 the victim took back the said hotel from the applicant. In connection with the said transaction, the applicant claimed a certain amount from the victim.

4. On 24th April, 2024 at about 3.15 pm the applicant accompanied by his four unknown associates had come to hotel Veera Residency and inquired about the victim. After the friends of the victim left the hotel at 5.00 pm, the applicant entered into the cabin of the victim and snatched away the mobile phone of the victim. Two of the unknown associates of the applicant 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, the applicant and his associates restrained them by pointing weapons and took away the victim with them. The applicant was armed with a knife and the three associates of the applicant were armed with pistols. Eventually, the applicant came to be apprehended along with the co-accused when they had come to collect the ransom.

5. Mr. Gaikwad, the learned counsel for the applicant, submitted that two of the co-accused Swapnil Avkirkar (accused No. 6) and Chandrakant Avkirkar (accused No. 2) have been enlarged on bail by this Court. Though it is alleged that the applicant was the principal accused, yet, the fact remains that there was a dispute between the applicant and the victim over the payment of the amount which the victim owed to the applicant. Therefore, the

applicant is entitled to the same dispensation as has been extended to the co-accused Chandrakant Avkirkar (accused No. 2) and Swapnil Avkirkar (accused No. 6).

6. The learned APP resisted the prayer for bail. It was submitted that there is material to show that the applicant and his hirelings had barged into hotel Veera Residency and abducted the victim by pointing weapons. The applicant had demanded a huge ransom of Rs. 50 lakhs. Therefore, the applicant does not deserve to be enlarged on bail.

7. While releasing the co-accused Chandrakant Avkirkar (accused No. 2) by an order dated 23rd April, 2024, this Court had noted that the pistols which were found in possession of the alleged abductors were not firearms, but toy guns. Nor the knife which was allegedly used by the applicant satisfied the description of the “arms” under the Arms Act, 1959. Therefore, the charge for the offence punishable under Arms Act, 1959 came to be dropped.

8. I have carefully perused the allegations in the FIR and the statement of the victim. Prima facie, it appears that the genesis of the alleged offences was in the dispute between the applicant and the victim arising out of a commercial transaction. The victim was allegedly abducted to recover the amount which the victim allegedly owed to the applicant. It is, in this context, the allegations of

kidnapping for ransom are required to be appreciated.

9. The fact that the knife with which the applicant was allegedly armed did not satisfy the description of the “Arms” under the Arms Act, 1959 and the pistol with which the co-accused were allegedly armed turned out to be toy guns may bear upon the gravity of the alleged offence. Was the alleged kidnapping for the purpose of ransom, in the backdrop of the genesis of the alleged offences, would warrant adjudication at the trial.

10. The applicant has been in custody since 25th April, 2023. It is unlikely that the trial can be concluded within a reasonable period. The applicant appears to have roots in society. The possibility of tampering with evidence and fleeing away from justice appears remote.

11. I am, therefore, impelled to exercise the discretion in favour of the applicant.

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.)