

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 231 OF 2024

Afnan Shakil Khan	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. Ganesh Gupta a/w Mr. Sahil Ghorpade, Mr. Madan Khansole, Mr. Surya P. Gupta, Ms. Roshni Naaz, Ms. Priyanka Rathod and Mr. Jagrut Patil i/by GG Legal Associates Advocates for Applicant.
- Ms. Shilpa K. Gajare-Dhumal, APP for State.
- API – Mahavir Jadav, Mankhurd Police Station, present.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2025

P. C.:

1. Heard Mr. Gupta, learned Advocate for Applicant and Ms. Gajare - Dhumal, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Spl. Case No.791 of 2023 arising out of Crime No.140 of 2023 registered with Mankhurd Police Station for offences punishable under Sections 392, and 120(b) read with 34 of the Indian Penal Code, 1860 (for short, "**IPC**") and under Sections 3(1) (ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999. (for short, "**MCOCA**"). Applicant is arraigned as Accused No. 3.

He is arrested on 22.02.2023 and is incarcerated for the past 2 years 2 months 2 days.

3. There are in total 3 accused persons involved in the present crime. On 21.02.2023 at around 3:00 a.m. in the morning first informant was accosted by two accused persons on bike. It is prosecution case that the pillion rider snatched first informant's mobile phone from his hand and left the incident spot. According to prosecution Accused No.1 – Aftab Sayyad is the gang leader and the robbery is committed by Accused No.1 – Aftab and Accused No.2 – Naushad.

3.1. Admittedly according to prosecution case present Applicant is arraigned as Accused No.3 in the present crime however he was not present at the incident spot at the time of robbery neither there is any recovery made from him. The first informant who has filed the complaint specifically speaks about two persons having committed the crime. The mobile phone of first informant - complainant has been recovered by the prosecution from possession of Accused No.1 and the scooter used in the commission of crime was recovered from house of Accused No.2.

3.2. According to learned Prosecutor Ms. Gajare – Dhumal the scooter which was used in the crime was an Activa scooter which was

in fact stolen by Accused No.3 and handed over to Accused No.2 for the purpose of committing crime. Nexus of Accused No.3 namely the Applicant in the present case emanates when the statement of his brother which is recorded by the prosecution is seen wherein he states that the moment he found out that the stolen mobile phone was sold out to one of his acquaintance whom he knew, he immediately asked the buyer to return it since it was stolen property. The brother of Applicant received the mobile phone from the buyer and he immediately handed it over to Accused Nos. 1 and 2. Indictment of the Applicant is on the ground that when Accused No.2 sold the stolen mobile phone to the purchaser / buyer (acquaintance of Applicant's brother) the Applicant was present at that time and witnessed the transaction of Rs.7,000/- which the purchaser paid to Accused No.2.

3.3. According to learned Prosecutor Accused No.3 is a member of the gang led by Accused No.1 – Aftab and assisted him and other gang members in commission of crime therefore provisions of MCOCA have been invoked. That apart she would also submit that there are six antecedents primarily of other offences to his discredit and therefore considering the background conduct of Applicant his bail Application be rejected.

4. I have heard the learned Advocate and perused the record of the case. *Prima facie* insofar as precise role of Applicant is

concerned, it is seen that save and except his presence at the time of sale of the stolen mobile phone there is no other incriminating material, *inter alia*, attributing any specific role of the Applicant to the present crime in question. Admittedly according to prosecution case when robbery is committed by Accused No.1 and 2 and role attributed to the present Applicant is about his presence when the stolen mobile phone was sold, I am of the opinion that Applicant can be released on bail.

5. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing PR. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m.

to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

6. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being

uninfluenced with any of the *prima facie* observations made herein above in this order.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

ER. Rajput

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