

Ajay

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

CRIMINAL BAIL APPLICATION NO. 3264 OF 2024

Kirtikumar Bankat Ghorpade	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 4471 OF 2024**

Deepak C. Ashtekar	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Mithilesh Mishra a/w. Mr. Anurag Mishra and R. Balsara, Advocates for Applicant in Bail Application No.3264 of 2024.
 - Ms. Sana Raees Khan a/w. Mr. Mihir Bhujbaj, Mr. Subhash Hulyalkar and Aisha Patel, Advocates for Applicant in Bail Application No.4471 of 2024.
 - Mr. R.M. Pethe, APP for Respondent – State in Bail Application No.3264 of 2024.
 - Mr. Sukanta A. Karmakar, APP for Respondent – State in Bail Application No.4471 of 2024.

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 04, 2025.

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant in Bail Application No.3264 of 2024; Ms. Khan, learned Advocate for Applicant in Bail Application No.4471 of 2024; Mr. Pethe, learned APP for Respondent – State in Bail Application No.3264 of 2024 and Mr. Karmakar, APP for Respondent – State in Bail Application No.4471 of 2024.

2. In the present crime, Applicants are co-accused in the same crime and incarcerated in prison for the past 1 year. Common order is passed in both matters. Case of the prosecution emanates from the First Information Report (FIR) which is filed on 17.01.2024 at 07:21 p.m. appended at page No.13 in Bail Application No.3264 of 2024. *Prima facie* it is seen that the incident occurred between 08:30 a.m. and 11:00 a.m. on 16.01.2024. According to prosecution case, First Informant – Complainant working as an Assistant with the Wadhwan family was travelling in their car from Andheri to Churchgate when he was intercepted, threatened at gunpoint and accosted by one person at the junction of Amar Mahal, Chembur from a trailing black Honda City car and two bags which he was carrying in the car with him were taken away by him after threatening him and the driver by stating that he was a CBI Officer. According to prosecution case, there was 3 interceptors out of which two are before me for seeking bail. What is stated in the FIR by the First Informant in his statement is crucial. He has categorically stated in the FIR that the bags contained Rs.1,50,000/- cash amount, his wallet, his Aadhar card, Pan card, ATM card, Rs.4,000/- cash amount, Mutual Fund papers of the daughter of Mr. Wadhwan, Court papers and the other bag contained clothes. I have perused the said statement. Incidentally, the same First Informant has recorded his supplementary statement after two days on 19.01.2024. Time of recording the supplementary statement is not

stated. *Prima facie* the supplementary statement gives a completely different version about the contents of the two bags namely the cash amount there being Rs.50,00,000/-. To justify this improvement a detailed script is narrated by the First Informant in his supplementary statement which refers to he having a conversation with the wife of his employer on the afternoon of 16.01.2024 and thereafter she advising him to go and file the FIR which he did on the following day but in the supplementary statement he has disclosed that the bag contained Rs.50,00,000/-. In order to further justify the contents of the supplementary statement, prosecution is relying upon statement of one Advocate appended at page No.61 of the Application. This statement is recorded belatedly on 16.02.2024, after almost one month which is *prima facie* a little ironical on the face of record. In that statement, the said Advocate has referred to certain transaction of Rs.50 lakhs in cash required to be paid towards fees of some Senior Advocates for whom the said amount was required to be paid and it was returned back for safe keeping in safe custody of the Wadhwas for a period of two days and thereafter it was carried by the First Informant on 16.01.2024 in one of the bag to be given to him by the First Informant. What is stated in the supplementary statement is that First Informant removed Rs.10,00,000/- from the said Rs.50,00,000/- and kept it in his sack for giving it to the Advocate. Whatever is stated by the First Informant in the supplementary statement as also attempted to be now

supplemented and improved by the statement of Advocate by the prosecution is completely missing and absent in the FIR statement recorded on 16.01.2024.

3. The dichotomy observed is such that the entire case of the prosecution *prima facie* appears to be concocted and suspicious on the face of record replete with infirmities regarding the contents of the bags which were stolen from the First Informant. Recovery has already been made rather substantial recovery has been made as pointed out by the learned Prosecutor Mr. Pethe in excess of Rs.20 lakhs in cash and therefore he would argue that an adverse inference should be drawn therefrom. The Court cannot draw any such adverse inference on the basis of recovery made from the residence of the Applicant from his safe in his house. The argument advanced by Mr. Pethe is preposterous and unsustainable on the face of record. He is not answering the improvement made and a fresh story planted in the supplementary statement as to how the amount of Rs.1,50,000/- became Rs.50,00,000/- within 2 days. In the supplementary statement it is stated that Rs.10,00,000/- was removed by First Informant and kept in his sack in the car with him and Rs.40,00,000/- was kept in the dicky of the car in the bag. The supplementary statement *prima facie* smacks of infirmities and absurdities on the face of record. Equally the statement of the Advocate recorded on 16.02.2024, belatedly after one month does not inspire the confidence of the Court *prima facie* at all.

Complicity of the Applicants can be proved by the prosecution at the time of trial on all aspects. *Prima facie* the case of the prosecution from the supplementary statement of the First Informant appears to be a clear suspect qua the statement in the FIR, hence the Applicants deserve benefit thereof. The Applicants therefore be released on bail.

4. Hence, Bail Applications are allowed subject to the following terms and conditions:-

- (i) Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;
- (ii) Applicants are permitted to furnish provisional cash bail of Rs.25,000/- each for their release immediately and file undertaking that their will provide one or two sureties in the like amount of Rs.25,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicants shall provide sureties as directed;
- (iii) Before their actual release from jail, Applicants shall furnish their address where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;

- (iv) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (v) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;
- (vi) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and/or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

5. 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.

6. Both Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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