

Order below exh. 12 in Sessions Case No. 292/2016.

[Moinuddin Ilyaas Shaikh Vs. State of Maharashtra]

1] This is an third application for bail u/s. 439 of Cr.P.C. by the accused Moinuddin Ilyaas Shaikh, who is arrested by Kotwali police station, Ahmednagar in connection with the Crime No. I-178/2016 punishable u/s. 395 of I.P.C.

2] The prosecution has strongly opposed the application by filing say at exh.13. It is contended that on 24/5/2016 at about 8.10 p.m., at Burudgaon road chowk, informant and prosecution witness were going towards their temporary residence in hotel Vaibhav Lodge, after completing their marketing work. The applicant/accused and others have thrown chilly powder in their eyes and stolen away their bag, which was containing golden ornaments worth Rs.31,00,000/- and fled away in Car. The golden ornaments are seized from the possession of accused. There is strong prima facie evidence against him. If he is released on bail he will commit similar type of offence. There is possibility of tampering with prosecution witnesses and he will likely to be absconded.

3] Heard defence counsel and learned A.P.P. Shri. A. B. Pawar, for the State.

4] Learned defence counsel has argued that applicant/accused and the informant Madanlal Purohit are residents of Pandharpur, Dist. Solapur. They are good friends and acquainted to each other, prior to the incidence. He has produced two photographs, showing their presence on picnic spot. He has further produced xerox copy of affidavit executed by informant before Executive Magistrate, Pandharpur. His address in the affidavit is shown to be of Pandharpur, Dist.Solapur. However, in the FIR, he

has given his address at Kalba Devi road, Mumbai, where he is serving.

5] Considering aforesaid facts and circumstances, it is noted that informant and applicant/accused are acquainted each other prior to the incidence. They have enjoyed the picnic together. In spite of that, FIR came to be lodged against unknown persons. In the circumstances, doubt arises in my mind as informant is suppressing material facts from the court.

6] It is further noted that previous to bail application of applicant/accused was rejected on the ground that investigation was in progress and some muddemal has been recovered from him. However, accused Pankaj Gaikwad was released on bail, who stands on the equal footing of applicant/accused. Therefore, applicant/accused is entitle to get the bail on parity.

7] The I.O. has filed charge sheet against all accused. Therefore, custodial interrogation of applicant/accused is not required. This is one more ground to release him on bail. On this point, applicant/accused has kept reliance on the ratio laid down by Hon'ble Bombay High Court in the case of Arif Husen Shabir Husen Vs. State of Maharashtra, 2006 (5) Mh.L.J. 241 and in the case of Laxman Hatti Vs. State of Maharashtra, 2004 Cri.L.J. 3809. Wherein, the accused has been released on bail after change in the circumstances.

8] The applicant/accused was arrested on 26/5/2016. He is in jail since then. It is well settled law that bail is rule and refusal is an exception. The bail should not be refused as a matter of punishment. The accused has to be considered an innocent till the guilt is proved against him.

9] For the reasons noted above, the applicant/accused is entitled to enlarge on bail. Hence, I proceed to pass the following order :-

Order

The bail application stands allowed as under :-

a) The applicant/accused - Moinuddin Ilyaas Shaikh, who is arrested by Kotwali police station, Ahmednagar in connection with the Crime No. I-178/2016 punishable u/s. 395 of I.P.C., be released on bail, on his furnishing PR bond of Rs.15,000/- with one solvent surety in the like amount.

b) The applicant-accused shall not tamper the prosecution evidence in any manner.

Date :- 15/10/2016.

[V. G. Mohite]
Additional Sessions Judge,
Ahmednagar.