

Order passed below Ex. No. 3 in Sessions Case No. 775/2016

1] This is an application under section 439 of the Code of Criminal Procedure.

2] briefly stated the facts leading to filing of instant application by the accused are that the complaint was lodged on 5-7-2016 by the informant Eliyas Ahamad Shaikh that when he was going in his Chevorlet Car and reached at about 9-00 pm near Wadia college bridge he stopped the car on the side of road. However, 3 people came, slapped him, assaulted him put him in his car and by giving him threats they got withdrawn Rs 13,000/- and Rs 5000/- from his ATM card. They have also taken his Samsung company mobile and Rs 10,000/- from his pocket. FIR was registered for the offence under sections 395, 363 of the Indian Penal Code . The applicant/accused along with accused Nos. 1, 3 and 4 have been arrested on 10-7-2016, since then the accused is in custody. He had filed first bail application which was rejected as investigation was in progress.

3] In the instant application the accused has submitted that he has not committed any offence, investigation is complete and chargesheet has been filed. He has been falsely implicated in this case. There is no overtact attributed to him and no deadly weapon has been seized from him, he has no criminal antecedents.

4] Ld. APP on the basis of report of IO has opposed the application and submitted that serious offence has been committed by this accused and other 4 accused. It is also submitted that accused Nos. 3,4 and 5 are criminals on

record. Against accused No. 4 action under MCOC Act has been taken. The accused has used his motorcycle CD 100 at the time of offence and if released on bail he may tamper the evidence and pressurize the witnesses.

5] Perusal of chargesheet indicate that 5 persons have been arrested by police. The accused Nos. 3,4 and 5 have criminal antecedents. The complainant has stated that he was by force made to sit in his car. They removed Rs 10,000/- from his wallet and withdrew Rs 18,000/- from ATM by using his debit card and they also took away his Samsung mobile. The vehicles were seized by police. Name of this accused was mentioned in the disclosure by the co-accused. Test identification parade of the accused was conducted. However, informant could not identify this accused. It also appears that no incriminating articles were seized from this accused. It is also not disputed by the prosecution that this accused does not have criminal antecedents. The offence under section 395 of the Indian Penal Code prescribe punishment upto imprisonment for life and offence under section 363 of the Indian Penal Code prescribe punishment upto 7 years. None of the offence prescribe punishment for death or imprisonment for life. The accused is in custody for more than six months. Now chargesheet is filed, so investigation is complete. The role of this accused is distinguishable from other co-accused. Considering all these facts and circumstances and custodial period of the accused as well as chargesheet having been filed, in my considered view, application deserves favourable consideration. Hence following order.

Order

- 1] The application is allowed.
- 2] The applicant Atif Rauf Shaikh be released on PB of Rs 25,000/- and one or two sureties in the like amount.
- 3] The accused shall not tamper with the prosecution evidence.
- 4] The accused shall not threaten, influence, pressurize any of the person acquainted with the prosecution case.
- 5] while on bail the accused shall not indulge in similar offence.
- 6] The accused shall attend each and every date in the court, unless his absence is excused by the court.

dt 25-1-2017

[P. Y. Ladekar]
Addl. Sessions Judge, Pune.

I affirm that the contents of this P. D.F. File judgment are same word for word as per original judgment.

Name of Steno- Smt. R. S. Urde,
Court Name- Shri P. Y. Ladekar,
Addl. Sessions Judge,Pune.

Date- 25-1-2017
Judgment signed by Presiding Officer on 25-1-2017
Date of PDF 30-1-2017