

ORDER BELOW EXH.4 IN SESSIONS CASE NO. 759/2015

By taking aid of Section 439 of Cr.P.C., the applicant/accused is seeking bail in connection with CR No. 321/2015 u/s. 363, 364A, 385, 307, 323, 504, 506, 452, 341, 147, 148 & 149 of Indian Penal Code registered with Sinhgad road police station.

2] The facts which are necessary for disposal of this application are recapitulated as under:

Informant Miteshkumar Surana is resident of Tarade colony, Sinhgad road, Pune. He decided to run business of Cyber Cafe and he was in need of money. Therefore, he approached to co-accused Viraj Gavane in April-2015. Co-accused Viraj Gavane had given him Rs. 20,000/- as loan @ 30% interest. The informant has to pay Rs. 6,000/- per month as interest. Accordingly, he had paid interest of one month to co-accused. Due to his financial condition, the informant could not repay the principal amount & also interest. The present applicant is the brother of co-accused Viraj. The applicant and co-accused were harassing him for the repayment of the amount. On 06/8/2015, the applicant and his brother were frequently making phone call to informant and threatening to him. On that day at about 10.30 pm they assaulted the informant by hand, but the matter was intervened by one Nitin Dahiwal. On 07/8/2015 at about 7.45pm, co-accused Chingya, one Nikhil entered into his house and assaulted him. They dragged him out of the house and forcibly took him to Goyalganga Society. Co-accused

Nikhil, Chingya assaulted him. After sometime the present applicant and co-accused Viraj came there. They took the informant in front of Goyalganga Society and assaulted him by making procession. Then, they took him in one flat at Narhe where he was striped and they started beating to him. Co-accused Viraj Gavane took out a bogus weapon like revolver and by pointing it he asked the informant to make phone call to his father and to come over there by bringing the amount. When the informant was talking with his father, at that time he was necked condition and co-accused Viraj made video-recording of his necked condition. After sometime, the present applicant and co-accused started receiving phone of police, hence they left the informant by threatening not to lodge the complaint. Thereafter, the informant went to police station and lodged the complaint.

3] On the basis of complaint, Sinhgad road police station registered an offence. The present applicant came to be arrested on 7/8/2015. Initially, he was remanded in police custody, and subsequently he remanded in judicial custody. At present, he is lodged in Yerwada Central Prison.

4] Besides the usual grounds of innocence and false implication, the applicant is seeking bail on the ground that the investigation is over. Police filed charge-sheet and the case has been committed to the Court. The custody of accused is not required. Some of accused are already released on bail. As such, on the ground of parity the applicant may be released on bail. The applicant is young &

commerce graduate having unblemished record. The applicant is having landed property and hails from respectable family. He is ready to abide each and every condition which would be imposed upon him.

5] The prosecution has strongly opposed this bail application vide its reply Exh.6. According to prosecution, there is prima facie evidence on record showing involvement of applicant in the crime, and therefore the application may be rejected.

6] Heard Shri. Sangle, the learned counsel for applicant and Shri. Wadekar, the learned APP for the state.

7] This is a second bail application of the applicant. From his application it is clear that his earlier bail application was rejected by Sessions Court. A successive bail applications are maintainable, provided the applicant must show that there are material change in circumstances which would entitle him to release on bail. I have gone through the order passed by the Sessions Court dated 28/9/2015. While deciding the bail application the investigation was in progress. A perusal of the charge-sheet it would reveal that police of Sinhgad road police station filed charge-sheet against the accused on 03/9/2015. Hence, it is clear that when the earlier application was rejected, at that time the investigation was in progress. Filing charge-sheet is certainly material change in circumstance, and therefore the present application is perfectly maintainable.

8] A perusal of the FIR lodged by the informant shows that the informant had borrowed some amount from the brother of applicant to run the business of Cyber Cafe in April-2015. The allegations in the FIR further shows that due to financial problem the informant could not repay the principal amount as well as interest amount to co-accused Viraj Gavane, and therefore co-accused Viraj Gavane and the present applicant were torturing the informant for the recovery of amount. The allegations in the FIR further shows that for the purpose of recovery of that amount he was kidnapped from the house, then his clothes were removed and his necked video suiting was made by co-accused and he was also beaten. The prosecution has not placed any material on record showing the criminal antecedents of the applicant. There appears to be a dispute between the parties over the monetary transaction. Now, the investigation is completed and police filed charge-sheet. Therefore, the custody of applicant is not at all necessary. Considering the pendency of cases of under trial prisoners in the Court, there is no likelihood of taking up the trial of the present accused in a near future and hence there is no propriety to keep the applicant/accused behind bar for uncertain longer period. Needless to mention here that the object of bail is not punitive. While deciding the bail application court is required to consider the evidence against the applicant as well as the possibility of tampering evidence or pressurizing the witnesses. Since in the instant case, police filed charge-sheet, therefore there is no question of tampering evidence arise. So far as apprehension of learned APP regarding pressurizing the witnesses, it's care can be taken by imposing certain condition. Investigation is completed. There is no necessity to

keep the applicant behind bar. Therefore, I am inclined to grant bail. In the result, I pass following order.

ORDER

- 1 Application is allowed.
- 2 Applicant Harsahad Pradeep Gavane be released on bail on his executing PR bond of Rs. 50,000/- with one or two solvent sureties in the like amount.
- 3 The applicant shall give attendance to Sinhgad road police station in a fortnight on Sunday in between 9.00 am to 12.00 noon until further order.
- 4 He shall not directly or indirectly make an inducement, threat or promise to any person acquainted to the facts of accusation against him so as to dissuade them from disclosing such facts to the court or to any police officer.
- 5 He shall not indulge in any crime, otherwise his bail stands cancelled automatically.
- 6 Inform concern police station accordingly.

Place-Pune.
Date:- 3rd February, 2016.

Sd/-
[Ashokkumar B. Bhillare]
Addl. Sessions Judge, Pune.