

ORDER BELOW EXH. 45 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 Cyber Cafe, however he was in need of money. Therefore, he approached to co-accused Viraj Gavane in April-2015. Said co-accused Viraj Gavane had given him Rs. 20,000/- as loan on interest @ 30%. The informant has to pay Rs. 6,000/- per month as interest. Accordingly, he had paid interest of one month to co-accused Viraj. Due to his financial problem he could not repay the principal amount as well as interest. Therefore, co-accused Viraj and his brother Harshad were harassing him for repayment of the amount. On 06/8/2015, co-accused Viraj and Harshad were frequently making phone call to him 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 7.45 pm, the present applicant and co-accused Nikhil entered into his house and assaulted him. They dragged him out of the house and forcibly took him to Goyalganga Society. The present applicant and co-accused Nikhil assaulted him. After sometime co-accused Viraj and Harshad came there.

They took the informant in front of Goyalganga Society and assaulted him by making his procession. Thereafter, they took him in one flat at Narhe where he was striped and he was assaulted. 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. He was also assaulted by all the accused persons. After sometime, 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 offence charged against him is not punishable with imprisonment of life and death. Investigation is completed and charge-sheet has been filed. Co-accused Swapnil, Harshad Gavane, Viraj Gavane and Abhishek Maral have been granted bail by this Court. Therefore, on ground of parity he is seeking bail. There are no criminal antecedents. He is ready to abide

each and every condition.

5] The ld. APP Shri Pathare filed his say and opposed the bail application mainly on the ground that there is clinching evidence and offence is serious in nature.

6] Heard Shri. Bhoite, the learned counsel for applicant. He submitted that the genesis of the crime is that there was monetary transaction between the complainant and co-accused Viraj Gavane. Since the present applicant could not repay the amount which was borrowed from co-accused Viraj, he was kidnapped and assaulted. The present applicant has no concern with the monetary transaction. Apart from this, co-accused Harshad Gavane, Viraj Gavane, Abhishek and others have been released on bail. Considering the role attributed to the accused who have been granted bail and the role of present applicant is identical. Therefore, on ground of parity the present applicant may be released on bail.

7] On the contrary, the ld. APP submits that offence is serious one and there is clinching evidence against the accused, therefore he prayed for rejection of this bail application.

8] This is the second bail application of the applicant. His earlier bail application was rejected. No doubt, successive bail applications are maintainable, provided that there must be substantial change in circumstance. Therefore, the applicant has to show the

substantial change in circumstance which is entitled him to seek bail. In the instant case, according to applicant, co-accused Viraj Gavane, Harshad Gavane and Abhishek have been granted bail by this court, and therefore, he is seeking bail. Obviously, if the co-accused released on bail, therefore this can be change in material circumstance. Therefore, the present application is perfectly maintainable. I have gone through the charge-sheet. A perusal of the charge-sheet would reveal that after completing investigation police filed charge-sheet on 03.11.2015 before the ld. Magistrate. It also shows that the ld. Magistrate committed this case to this court on 07.12.2015. A perusal of the FIR would show that the informant had borrowed Rs. 20,000/- from co-accused Viraj Gavane for his cyber cafe in April-2015. It also shows that the informant has to pay interest @ 30%. It further shows that the informant paid Rs. 6,000/- towards the interest but on account of his financial crisis he could not repay the amount. Therefore, co-accused Viraj and Harshad were harassing him for the recovery of amount. The allegations in the FIR further shows that for the purpose of recovery of amount, incident of quarrel had taken place between informant and co-accused Harshad and Viraj, but that quarrel was pacified by one Nitin Dahiwal. FIR further shows that on 07.8.2015 the present applicant kidnapped the informant and he was taken to one flat where he was harassed. The allegations in the FIR shows that one co-accused Nikhil and the present applicant was the person who had dragged the informant from his house and taken to the flat at Narhe. So far as the role of present applicant and the role of co-accused Nikhil is concerned, their role is identical. Therefore, when Nikhil has been granted bail, obviously on the ground of parity the

present applicant is entitled for bail.

9] From the FIR as well as the statements of the witnesses, it appears that whatever monetary transaction was between co-accused Viraj Gavane and informant. The present applicant and co-accused Nikhil had no concern with it. To seize that, they have simply assisted co-accused Viraj Gavane and Harshad Gavane for recovery of amount. It is pertinent to note that co-accused Viraj and Harshad Gavane with whom the informant had monetary transaction have been granted bail by this court. Now the investigation is completed. Police filed charge-sheet, therefore custody of applicant is not necessary. Considering the cases of under trial prisoners in the court, there is no likelihood of taking up the trial of present applicant in near future. Therefore, there is no propriety to keep the applicant behind bar for uncertain longer period. There cannot be dispute that the object of bail should not be punitive. Since the police filed charge-sheet therefore there is no question of tampering the evidence of applicant. The ld. counsel for applicant relied upon 2010 ALL MR 1793, Vinod Bhavarlal Mehta V/s. State of Maharashtra, 1993 Bom. Cr.C. 165 Rajesh Bhawar V/s. State of Maharashtra and 2001 ALL MR (Cri.) 1403 Kunal Chavan V/s. State of Maharashtra. I have gone through the case laws. These are on point of parity. Since in the instant case except the present applicant all co-accused have been released on bail. Therefore, the present applicant is entitled to release on bail.

ORDER

1. Application is allowed.

2. Applicant Abhishek @ Chingya Vijay Nivalkar 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:- 18.6.2016

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