

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1786 OF 2018

Omkar Prasad Kharat, Age 19 years,  
R/o.606, A Wing, Himalaya Building,  
Lokdhara, Lokgram, Kalyan (E)  
(Presently lodged at Adharwadi Prison, Kalyan) Applicant  
versus  
The State of Maharashtra Respondent

WITH  
CRIMINAL BAIL APPLICATION NO.1779 OF 2018

Omkar Prasad Kharat, Age 19 years,  
R/o.606, A Wing, Himalaya Building, Lokdhar,  
Lokgram, Kalyan (E)  
(Presently lodged at Adharwadi Prison, Kalyan) Applicant  
versus  
The State of Maharashtra Respondent

Mr.Karan Singh Rajput I/by Satish S. Raut for applicants.  
Mr.Y.Y.Dabke, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 31<sup>st</sup> October 2018

PC :

1. The applicant is arrested in connection with CR No.I-229 of 2017 registered with Kapur Bawdi Police Station, Thane for offences under Sections 394, 323 r/w 34 of Indian Penal Code. The applicant was also arrested in connection with CR No.I-619 of 2017 registered with Manpada Police Station for offences under Sections 395, 341, 120B, 323 and 504 of Indian Penal Code. The applicant has preferred Bail Application No.1786 of 2018 in connection with CR

No.I-229 of 2017 and Bail Application No.1779 of 2018 in connection with CR No.I-619 of 2017.

2. The case of prosecution in relation to Bail Application No.1786 of 2018 is that the first informant Ganesh Chikne is a driver of vehicle viz Waganor which was entrusted to him by Anil Bhosale. On 1<sup>st</sup> November 2017 at about 6.30 am, the informant took his car for business. Some passengers had boarded near Panvel Railway Station and they were to be taken to Ulhas Nagar. After dropping the passengers at Ulhas Nagar, the vehicle was hired for dropping the passenger at Borivali, Lower Parel, Malad, Vasai etc. After the last trip, the complainant was on his way home. While returning, at about 1 am, when he reached near Rustomjee Tower, he stopped the vehicle to answer nature's call. Four unknown persons came behind him. Two persons started assaulting him and one of them took cash from his pant pocket. The fourth person entered his car and forcibly took the Ola company device installed in his car, his mobile and the documents of complainant's vehicle. The accused then fled away from the place of incident. The applicant was arrested on 13<sup>th</sup> November 2017. On completing the investigation charge sheet is filed. The applicant and three other accused preferred application for bail before the Sessions Court, Thane. The said application was rejected on 13<sup>th</sup> March 2018. It is submitted that the applicant has been falsely implicated in this case. He is in custody from the date of arrest. There is no recovery from the applicant in connection with aforesaid FIR. All the other co-accused are granted bail by Sessions Court. It is further submitted that although the prosecution case is that the applicant has been identified in this case, the identification parade memo was not supplied to him along with charge sheet. It is

submitted that in the statement of the complainant which was recorded pursuant to the identification parade, he has stated that he had identified all the accused. Thus, other accused who were identified were also granted bail. It is submitted that the applicant is 19 years old and 11<sup>th</sup> standard student. He was also arrested in connection with CR No.I-371 of 2017 registered with Mahatma Phule Chowk Police Station, Kalyan. He has been granted bail. It is submitted that there is no test identification parade in connection with CR No.I-229 of 2017 registered with Kapur Bawdi Police Station. It is submitted that there is no recovery from the applicant.

3. Learned APP submitted that supplementary statement of complainant was recorded in connection with CR No.I-229 of 2017 wherein he has stated that he has identified all the accused nos.1 to 6. However, I do not find the test identification parade memo in the entire charge sheet. In any case, it can be seen that all other co-accused are granted bail by the Sessions Court and one of the accused is granted bail by this Court. It is also noted that there is no recovery from the applicant. In the circumstances case for grant of bail is made out in connection with CR No.I-229 of 2017.

4. As far as CR No.I-616 of 2017 is concerned, the applicant is arrested and is in custody from the date of arrest. Even in the said case several persons were arrested and granted bail. This Court had granted bail to co-accused Rohit Singh vide Bail Application No.846 of 2018 in CR No.619 of 2017. It is pertinent to note that prosecution is relying on test identification parade. According to learned APP, the applicant has been identified as one of the person who is involved in the said crime. The prosecution case in CR No.I-

619 of 2017 is that the first informant Mangesh Bagve is working as driver of Ola taxi. On 1<sup>st</sup> November 2017 he received booking at midnight for Krishna Nagar in Ulhas Nagar. He picked up passenger and dropped him via Kalyan-Shil Road. While returning to Airoli via Kalyan-Shil Road, new Tata Power House, at 2 am, a white colour accent car blocked the way of complainant's car and 6 persons got down from the car. They forcefully took his mobile, wallet, key of the car and started assaulting him. After that they fled away from the place of incident. Even in this case there is no recovery at the instance of applicant. All the co-accused are granted bail. Although test identification parade was conducted in this case, the prosecution could not point out that supplementary statement was recorded after test identification parade. Considering the aforesaid circumstances, the applicant can be granted bail.

5. Hence, I pass following order :

#### **ORDER**

- (i) Criminal Bail Application No.1786 of 2018 and Criminal Bail Application No.1779 of 2018 are allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-229 of 2017 registered with Kapur Bawdi Police Station, Thane, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is directed to be released on bail in connection with CR No.I-619 of 2017 registered with Manpada Police Station, Dombivali, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iv) The applicant shall not tamper with evidence;

- (v) The applicant shall attend Manpada Police Station, Dombivali once in a month on every first Monday between 11 am and 1 pm till conclusion of trial;
- (vi) The applicant shall attend Kapur Bawdi Police Station, Thane once in a month on every first Saturday between 11 am and 1 pm;
- (vii) The applicant shall also attend the Trial Court on the dates of hearing of the cases regularly, unless exempted by the Trial Court for some reason.

(PRAKASH D. NAIK, J.)

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