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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2696 OF 2014

Irshad Abdul Samad Ansari	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Gaurav Parkar, for the Applicant.
Ms.P.P.Shinde, APP for the Respondent – State.
PSI – Mandale, V.PMarg Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.
DATED : 31st MARCH, 2015.

PC.

1. Heard learned counsel for the Applicant and the learned APP for the Respondent – State.
2. By this application, the applicant seeks his enlargement on bail, in connection with C.R. no.38 of 2014, registered with the V.PMarg Police Station, Mumbai, for the alleged offences punishable under Sections 341, 394, 395, 397, 506(2) of the Indian Penal Code, under Sections 3, 4, 25, 27 of the Arms Act, under Sections 37(1), 135 of the Bombay Police Act, and under Sections 3(1)(II), 3(2), 3(3), 3(4) of Maharashtra Control of Organized Crime Act, 1999.

3. The alleged incident is stated to have taken place on 13th February, 2014, and the present applicant came to be arrested in connection with the aforesaid crime on 16th February, 2014. According to the first informant, he and his servant arrived at Mumbai, at the Mumbai Central Railway Station from Ahmedabad on 13th February, 2014, at about 6.30 a.m., and were carrying with them, a sum of Rs.1,30,000/- in cash, electronic goods, hardware and other goods. It is alleged by the first informant, that when they were walking towards their office, six people tried to assault the complainant and two of them tried to snatch the bag of the complainant. He has alleged, that a person having a revolver, fired two rounds in the air and two rounds towards the complainant. It is alleged that when the complainant came ahead, the said person fired at the complainant, pursuant to which the complainant sustained an injury on his left hand. It is also alleged that one person who was armed with a chopper, snatched the bag from the complainant's hand and as people from the vicinity started gathering at the spot, ran away. It is further alleged that in the scuffle, one of the accused left a grey coloured bag on the spot. It appears, that with the help of persons assembled at the spot, one accused i.e. Mohd. Intezar Umardaraz Khan @ Pathan was apprehended and from him, one country made revolver, having 5 empty

cartridges and 1 live cartridge and from a pouch 14 live cartridges were seized. According to the first informant, he, himself chased the persons who got into a Toyota Innova Car bearing No. MH-3321 and sped away. As the accused committed dacoity of a khaki coloured bag, containing Pan Card, Driving License, Cash of Rs.1,30,000/-, etc., the complainant lodged an FIR as aforestated. The present applicant has been arrested along with some other co-accused, in the said C.R.

4. Learned Counsel for the Applicant contended that the only material qua the applicant, as alleged by the prosecution is an identification parade. He submitted that the five witnesses including the complainant, who have identified the applicant, have only stated, that the present applicant was standing near the vehicle i.e. Toyota Innova Car. He submitted that no specific role has been attributed to the present applicant by any of the witnesses. He submitted that as far as recovery of the motorcycle is concerned, the said motorcycle, which belongs to the applicant's brother, was recovered at the instance of co-accused – Dilshad Ansari (Original Accused No.3). He submitted that the memorandum statement, recorded under Section 27 of the Evidence Act, made at the instance of accused no.3, does not show the complicity of the present

applicant. In fact, according to him the said memorandum statement clearly absolves the applicant. Learned Counsel for the applicant also submits that except the present case, the applicant has no antecedents.

5. Learned APP opposed the bail application. She submitted that the present applicant has been identified by five witnesses, who have specifically stated that the applicant was standing near the car, and had gone with the accused in the said car from the spot. She further submitted that the motor-cycle used in the said case, although seized from co-accused Dilshad Ansari, belongs and is owned by the applicant's brother. She submitted that the applicant's brother's statement shows, that the said motor-cycle was provided by the applicant to the co-accused.

6. Perused the charge-sheet. At the outset, it may be noted that under Section 21(4) of the M.C.O.C. Act, the Court can enlarge an accused on bail, only if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and that he is not likely to commit any offence while on bail. As far as complicity of the applicant in the present case is concerned, a perusal of the supplementary statements of the eye-witnesses, who have identified the present applicant, as being

the person at the spot, standing near the Toyota Innova Car, clearly shows that he has been identified. It appears from the supplementary statements of the witnesses, that the applicant was present at the spot; at the time when the incident took place, and that the applicant went in the Toyota Innova Car along with other co-accused, who assaulted the complainant. The statement of all the five eye-witnesses, including the complainant is consistent with regard to the same. As far as the complainant is concerned, he has categorically stated that after the assault on him he followed the silver colour Toyota Innova Car, which was waiting for quite some time, prior to the incident, near the Gulalwadi Circle, however, he missed them later.

7. Considering the aforesaid material on record, it is difficult to come to the conclusion, that the applicant is not guilty of the aforesaid alleged offences.

8. Hence, the Application for bail is rejected and disposed of as such. The trial, being S.C. No.7 of 2014, is expedited.

9. Needless to observe, that the trial court shall decide the case on its own merits, uninfluenced by the observations made in this order.
10. Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)