

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 248 OF 2016

Rajendra Rihidas Chavan. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Ashwin Thool i/b. Ms. Reshma J. Mutha, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. A.D. Ghadigaonkar, PSI, ACB CID, Unit-4.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 30, 2016**

P.C.:

1 Learned Counsel for the applicant submits that the applicant has been in custody for more than 6 years and therefore, he is entitled to be enlarged on bail. The learned APP submits that the trial has commenced and 7 witnesses are examined. Today, 9th witness is being examined. The applicant herein is being tried under the provisions of the M.C.O.C. Act.

2 The learned Counsel for the applicant vehemently submits that by an order dated 22/2/2016, the Hon'ble Apex Court has questioned the State of Maharashtra as to why the charges were not framed despite the fact that the co-accused was in custody for nearly 5 years. The learned Counsel further submits that by an order dated 13rd April, 2016 the trial of the accused Mohd. Saquib be separated and trial against remaining accused be commenced without further delay and liberty was granted to the co-accused to move appropriate court for bail after framing of charges. The learned APP submits that the trial has not been separated and Mohd. Saquib is also being tried alongwith the present applicant.

3 It is true that the Hon'ble Apex Court had granted liberty to move application for bail after framing of charges. However, as on today, 9 witnesses are examined and enlargement of the accused on bail would be fatal to the prosecution. Therefore, this Court is of the opinion that the application seeking bail under Section 439 of the Code of Criminal Procedure, 1973 cannot be considered on merits, as

the prosecution is in the process of adducing substantive evidence. Protection of witnesses would be at stake. This Court would also not be in a position to record a subjective satisfaction that the applicant would not indulge into similar offences in the eventuality of being enlarged on bail.

4 The application stands dismissed and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)