

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

CRIMINAL BAIL APPLICATION NO. 1161 OF 2016

Mr. Mohamad Firoj Khan @ Irani & anr. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Samyak Gimekar i/b. Mr. Rajesh V. Katore, advocate for Applicants.

Mr. Prashant Jadhav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 23, 2016**

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant No. 1 herein is arrested on 5/5/2014 and applicant No. 2 is arrested on 6/5/2014 in Crime No. 36 of 2014 registered at Lashkar Police Station for offence punishable under Section 395 read with Section 34 of the Indian Penal Code.

2 The application seeking enlargement on bail filed before the Additional Session Judge, Pune was rejected on 25/4/2016. It appears from the said order that the charge is framed on 29/9/2015 and the trial has commenced.

3 The learned Counsel for the applicants submits that although the charge is framed on 29/9/2015 till today, no witnesses are examined. The learned Counsel for the applicants submits that in the present case, the accused was unknown to the informant. However, the investigating agency has not conducted test identification parade. Moreover, although the applicant is charge-sheeted for the offence punishable under Section 392, 395 of the Indian Penal Code. The investigating agency has not been able to establish that there were more than 5 accused in the said offence.

4 As against this, the learned APP submits that the case could be registered against the unknown accused in collusion with the present

applicants. The learned APP has also drawn the attention of this Court to the recovery at the instance of the accused No. 2, which shows that there is recovery of Mangalsutra valued at Rs. 44580/-. In the present case also allegation is in respect of snatching Mangalsutra from the neck of the first informant on the date of the incident after she had opened the floweriest shop at about 5.30 a.m. The learned Counsel for the applicants has expressed his inability to disclose the profession of the applicants or the source of their income.

5 In view of the above, in the facts of the present case, taking into consideration the nature of allegations and the material collected by the investigating agency in the course of investigation, the applicants do not deserve to be enlarged on bail.

6 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The

learned Sessions Judge shall not be influenced by the same at the time of trial.

7 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)