

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1599 OF 2016

Deva Lahoo Mohite	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Gaurav Parkar, Advocate for the applicant.
Ms. Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 8th September, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C.
2. The applicant herein is arrested on 28.2.2016 in Crime No.51 of 2015 registered at Poladpur Police Station Raigad on 26.11.2015. After completion of investigation, charge-sheet is filed on 24.5.2016 and the applicant has been charge-sheeted for the offence punishable under Sections 395, 397, 460, 120-B of the IPC.
3. It is the case of the prosecution that on 26.11.2015, one Sandeep Ramchandra Nare lodged a report at the police station alleging therein that on 25.11.2015 at about 10.20 p.m. he had opened the door of

his house upon hearing the door bell. Upon enquiry, the visitor had disclosed his name as Bhillare. The moment he opened the door, he saw four other persons behind the person who had disclosed that he was Bhillare. Soon thereafter, all of them entered into the house, mounted assault upon the complainant and his family members. They insisted upon the complainant to pay Rs.5 lakhs and also threatened them of dire consequences. The complainant under coercion had given all the ornaments and cash and had requested the persons not to assault them. They had also taken away the cellphones of the complainant and other family members. That the complainant had given the description of the persons who had entered his house and committed dacoity. On the basis of his report, Crime No.51 of 2015 was registered at Poldapur Police Station for the offences punishable under Sections 395, 397, 460 and 120B of the Indian Penal Code.

4. The investigating agency had enquired with the family members who had also given similar description. On the basis of the description, the images of the said assailants were drawn and were circulated amongst the police officers and the nearby villages. In the course of investigation, the person seized in the image was residing in a particular

room. The police had kept a track and had tracked the present applicant in December itself. However, since they did not have sufficient material, they only kept a track on the present applicant and finally arrested him on 28.2.2016 while in custody. The investigating agency had obtained the CDR of the cellphone of the applicant and could establish his nexus with the co-accused. While in custody, the accused had disclosed that they had committed dacoity and had sold the ornaments to P.N.Gadgil Jewellers and had obtained new ornaments in lieu of that. That they had sold the said new ornaments and encashed the same. The statements of the witnesses have been recorded under Section 164 of Cr.P.C. The test identification parade was conducted and the applicant has been identified by the witnesses.

5. The learned counsel for the applicant submits that the basis on which the applicant was arrested does not form part of the charge-sheet and hence cannot be relied upon at this stage. The learned counsel submits that the CDR details have been taken on record only in respect of the calls which were made just before the arrest of the applicant.

6. As against this, the learned APP submits that it is a matter of trial and the prosecution is bound to stand on its own legs provided they

are given a fair opportunity. It is also submitted that the liberty of the individual has to be weighed against the safety and security of the society at large. In view of this, the application being sans merits, deserves to be rejected.

7. It is made clear that the learned Sessions Judge shall not be influenced by any of the observations made in the present order since the observations are restricted to decide the application under Section 439 of Cr.P.C.

(SMT.SADHANA S.JADHAV, J.)