

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

CRIMINAL BAIL APPLICATION NO. 1641 OF 2016

Divesh Deepak Deshmukh.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Chaitanya Pendse, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 6, 2016**

P.C.:

1 Heard the learned Counsel for the applicant 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 herein is arrested on 1st March, 2016 in Crime No. 51 of 2015 registered at Poladpur Police Station, Raigad for offence punishable under Section 395, 397, 460 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 26/11/2015 one Sandeep Nare, resident of Poladpur, Raigad lodged a report at the police station that he runs a rice mill. That on 25/11/2015 at about 10.20 p.m. upon hearing door bell of the house, his mother had opened the door. He had followed his mother. There were four unknown persons at the door step. Upon enquiry they had disclosed that they have come from Bhilar and on the next day they wish to bring rice in his mill. They had also asked him at what time they should come. The first informant had asked them to come at about 9 a.m. The said unknown person had also asked for cell phone number of the first informant. When the complainant and his mother were about to enter into the house, all the four persons had rushed into the house. They were followed by two other persons who had muffled their faces. Thereafter, it is alleged that the inmates of the house were assaulted with fists and kick blows and there was a demand of Rs. 5 Lakhs. The said unknown person had also threatened inmates of the house with dire consequences. The women folks in the house had handed over their ornaments to the said unknown persons as

they were armed with deadly weapons and there was apprehension that they would cause serious injuries to them. The inmates of the house were assaulted. The first informant had given the description of the said unknown persons and had also made a statement that in the eventuality he is confronted with them, he would be able to identify them. The value of the goods stolen from the house was Rs. 2,78,000/-. On the basis of the said report, Crime No. 51 of 2015 was registered against unknown persons for the offence punishable under section 395,397, 460 of the Indian Penal Code.

4 The investigation was set in motion. On 1st March, 2016 the applicant was arrested. On 16th March, 2016 the applicant was subjected to test identification parade and he was identified by the complainant and the witnesses as one of the persons, who had visited the house on 25/11/2015. The applicant was identified by the wife of the first informant. After test identification parade was over on 17/3/2016, statement of the witness was recorded and she has disclosed that Divesh Deshmukh i.e. the present applicant was armed

with steel rod and he had assaulted her with steel rod. The compilation of the charge-sheet also includes call details record, more particularly, call details of the present applicant with the original accused No. 1 dated 24/11/2015 on two occasions.

5 The learned Counsel for the applicant vehemently submits that incriminating material in the form of test identification parade cannot be relied upon at this stage for the simple reason that the witnesses have also identified one of the accused who had muffled his face. Therefore, correctness of the report of identification parade would be doubtful. It is also submitted that the applicant is 20 years old and this is the first offence, in which he has been arraigned as an accused. Learned Counsel further submits that it is true that the applicant was acquainted with the accused No. 1, but that by itself would not indicate that he is involved in the said offence. It is also submitted that there is no recovery at the instance of the present applicant and hence, the applicant deserves to be enlarged on bail.

6 As against this, the learned APP submits that the applicant is a resident of Nalasopara, whereas the accused No. 1 is resident of Raigad. The incident had occurred at Raigad. The learned APP also submits that at this stage, test identification parade would be relevant material for denying bail to the applicant. It is also submitted that the call details record would clearly indicate the complicity of the present applicant in the present offence alongwith accused No. 1. Learned APP further submits that the applicant is being prosecuted for the offence punishable under Section 395, 397 of the Indian Penal Code and hence, he does not deserve to be enlarged on bail.

7 The liberty of individual has to be weighed against the safety and security of the society at large. That the applicant is being prosecuted under Section 395, 397 of the Indian Penal Code. In the eventuality that he is enlarged on bail, there can be no assurance that he may not indulge into similar offence and would be hardened criminal.

8 In these circumstances, taking into consideration, the incriminating materials against the applicant in the form of test identification parade, the applicant does not deserve grant of bail.

9 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. The learned Sessions Judge is also requested to make an endeavour to conclude recording of evidence as far as possible within 9 months from the date of framing of charge.

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

(SMT. SADHANA S. JADHAV,J)