

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1670 OF 2016

Maksud Ahmedjaki Khan	...	Applicant
Vs.		(Orig.Accused No.2)
The State of Maharashtra	...	Respondent

Mr. Jayesh A. Vithlani, Advocate for the applicant.
Mr. Rajan Salvi, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 14th October, 2016.

P.C.

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 26.9.2014 in Crime No.295 of 2014 registered at Talegaon Dabhade Police Station for the offences punishable under Sections 395, 397 and 342 of the Indian Penal Code. After completion of investigation, charge-sheet is filed.

2. The investigating agency had prayed to the Appropriate Authority for granting permission to prosecute the applicant under the provisions of the Maharashtra Control of Organized Crimes Act (MCOCA). Taking into consideration the facts of the case, permission was granted and hence the applicant is being prosecuted under the provisions of MCOCA

along with the co-accused.

3. It is the case of the prosecution that on 23.9.2016, one Sandip Patil lodged a report at the police station that he is working as Manager in KLT Automotive & Tabular Co. for the past 3 years. That on 25.9.2014, the security guard of the said factory called upon the first informant and informed him that at about 2 a.m., 5-6 unknown persons, who were aged about 25-30 years old, had entered into the factory. They were armed with deadly weapons, such as iron rods, sticks, etc. They had threatened the security guard and thereafter had stolen the goods from the shed of the factory as well as other valuables to the tune of Rs.1,18,000/-. On the basis of the said report, Crime No.295 of 2014 was registered at the police station and the investigation was set in motion. The applicant was arrested on 26.9.2014 and is in custody.

4. The learned counsel for the applicant submits that the incriminating material as against the present applicant are as follows :-

That the applicant has been identified at the test identification parade by one of the witnesses. It is further submitted that there is recovery at the instance of the present applicant in the form of weapons and other material. It is submitted that the age of the applicant is about 44 years old, whereas the security guard had given a specific information that the accused were 22

– 25 years old. The learned counsel vehemently submits that in fact, even according to the prosecution, the dacoits had muffled their faces and therefore identification parade would be a futile exercise and moreover the applicant is 45 years old.

5. As against this, the learned APP submits that since all the dacoits had muffled their faces, the security guard had presumed the age of the said persons only on the basis of their physical constitution. The learned APP further submits that the incident had occurred at about 2 a.m. and the security guard was under a shock and it cannot be believed that he would be able to ascertain the age of the miscreants at that time.

6. The learned counsel for the applicant has drawn attention of this Court to the confessional statement of the present applicant. In the confessional statement, the applicant had stated that he is in fact original resident of Taluka Sohratgarh, District Sidharth Nagar, U.P. That he had sold his agricultural land and had come to reside at Nashik. He has stated in his statement that in the year 2012, he had sold the land for a consideration of Rs.1 lakh. He had left Rs.50,000/- for domestic expenses with his family members and the rest of Rs.50,000/- he had given to his friend Abdul Rashid Khalil Shaikh @ Behra. That Behra had assured him that they would buy a small hut and start business of bakery. It is further

stated that soon thereafter, i.e. 3 -4 days, the accused Abdul Rashid Khalil Shaikh had directed the applicant to bring his scrap material in his truck and that the applicant had filled the scrap material in the truck and was driving it and at that time i.e. 2 a.m., he was apprehended by the police. It is submitted that earlier also he was prosecuted along with Abdul Rashid Khlil Shaikh and was enlarged on bail within 2 – 3 days. Needless to say that the present offence is registered against the applicant, while he was on bail in another offence. Since the applicant is being prosecuted under the provisions of MCOCA, it would be incumbent upon this Court to consider the mandate of Section 21 of the MCOCA. Section 21 of MCOCA reads thus :-

**“21 Modified application of certain provisions of the
Code -**

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

It would be difficult for this Court to record the subjective satisfaction in the eventuality that the applicant is enlarged on bail, he may not indulge into similar offence. Individual liberty has to be weighed as against the security and safety of the society and hence the applicant does not deserve to be enlarged on bail.

The application being sans merits, stands rejected.

(SMT.SADHANA S.JADHAV, J.)