

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

BAIL APPLICATION NO.381 OF 2017

Vishal @ Magur Vasant Surve Applicant

Vs.

The State of Maharashtra Respondent

Mr. Aniket Nikam i/by Mr. Chetan S. Damre for the Applicant.
Mrs. P.P. Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 21st December, 2017

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested in Crime No.6 of 2015, registered at Haveli Police Station, Pune for the offences punishable under Sections 394 and 170 Indian Penal Code and under Sections 3(1)(i)(ii),3(4) of Maharashtra Control of Organised Act, 1999 (MCOC Act). The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 9th January 2015, Rupali Hagwane lodged a report at the Police Station alleging therein that her husband is the owner of Hotel Sarthak. That on 8th January 2015, her husband returned home at about 1.00 am. In the early hours of 9th January 2015, the staff of Sarthak Hotel namely Ashruba Dnyanoba Sonawane had come to their house. He knocked the door and informed the complainant that the people from crime branch have come and therefore, she opened the door. Suddenly, 3-4 persons had barged into her house. They had threatened to kill her with the weapon i.e. sickle. They assaulted her and demanded Rs.20,000/- and also threatened her that upon failure to pay Rs.20,000/-, they would kill Sonawane. They had also threatened to kill her minor son and thereafter he had opened her cupboard and taken away golden and silver jewellery worth Rs.2,48,000/- and had also taken away some cash. On the basis of the said report, the offence was registered.

4 On 9th January 2015, the statement of Ashruba Dnyanoba Sonawane was recorded. He had disclosed to the police that on 8th January 2015, when he was sleeping in his room in Hotel Sarthak and Lodging, some people had knocked his door. Upon opening the door, four persons had entered into the room and had demanded the

address of Gotusheth i.e. his owner. He had demanded Rs.1.00 Lac from him. Thereafter they had taken him away and had made him accompany them to the house of the complainant. He was taken in a white colour car. Even according to Ashruba, they were in all four persons, two persons had accompanied him and two had followed them on a motorcycle.

5 In the course of the investigation, the principal accused Ram Kedari was arrested. The present applicant was arrested on 16th September 2015 and Indica car is recovered from him. The car belonged to the grandfather of the present applicant.

6 On 16th December 2015, the supplementary statement of Ashruba Sonawane was recorded, in which he had named the present applicant. He has also given registration number of the Indica car, which was recovered on 17th September 2015.

7 The statement of Ashruba Sonawane was also recorded under Section 164 Cr.P.C.. He had disclosed at the threshold, six persons entered into his room. Admittedly, the said version is at variance with the first two statements of Ashruba Sonawane. The accused persons were subjected to test identification period. The present applicant has not been identified by the complainant i.e. Rupali. However, he has been identified by the witness- Ashruba

Sonawane.

8 Since the accused are being charged under the provisions of MCOC Act, the prosecution has filed an affidavit and in the said affidavit, it is admitted that the present applicant has no criminal antecedents, even he has not been charge-sheeted alongwith the principal accused and the present case is the only criminal case registered against him. Learned counsel for the applicant submits that no role is attributed to the applicant and the fact that Ashruba Sonawane has identified him, it can only be said that the present applicant was standing outside the room. The applicant has been identified by the person, which would show that he had not entered into the house of the first informant at the time of commission of robbery and neither he has caused any hurt to the first informant. It is apparent that only after the car was seized, Ashruba has given registration number of the car. In his statement, he had not even mentioned the Make of the said car. It is, in these circumstances that the observations can be made under Section 21, Sub-clause (4)(b) of MCOC Act and it can be said that while on bail, the applicant may not indulge into similar offence. It is not stated in the affidavit that there are confession statements of the co-accused, which could be admissible. The applicant has made out a case for grant of bail. However, the same shall not be considered for the purpose of quashing of the first information report under the provisions of

MCOCA Act, discharge application or at the time of trial. Hence, the order :

O R D E R

- 1 The application is allowed.
- 2 The applicant be enlarged on bail in Crime No.6 of 2015, registered at Haveli Police Station, Pune, on furnishing P.R. bonds in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- 3 The applicant shall not enter into Haveli Taluka till the conclusion of the trial.
- 4 The applicant shall report to Kothrud Police Station on every Wednesday and Sunday till the conclusion of the trial.

(Smt. Sadhana S. Jadhav, J)