

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 501 OF 2016

Suraj Shankar Pavale	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Vilas B. Tapkir, Advocate for the applicant.
Mrs. Rutuja Ambekar, APP for the respondent/State.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 8th February, 2017.

P.C.:

This Application is filed for bail under section 439 of Cr. P.C., as the applicant is arrested for the offences punishable under section 395 of the Indian Penal Code, under sections 3(25) and 4(25) of the Arms Act and Sections 3(1)(ii) and 3(4) of The Maharashtra Control of Organized Crime Act registered with Jejuri police station.

2. The complainant Mr. Mahesh Ramchandra Patane is working as Junior Executive in Checkmate Private Services, Baner. The company has entrusted the work to fill the cash in ATM machines of Bank of Maharashtra. For this work, one balero jeep owned by the company is used. The complainant along with a driver, a security guard and a custodian working in the bank go to fill up cash in different ATM machines in the Bank of Maharashtra. On 24th May, 2015 the complainant along with

one custodian Mr. Sooraj Pavale, i.e., applicant/accused, who is custodian, left the office of the company with cash of Rs.99,50,000/-. They filled up cash in some ATM machines at Somwaarpeth, Hadapsar machines. When they were proceeding towards Daund at around 5.15 p.m., one Maruti Esteem accosted their jeep and two persons from Maruti Esteem came towards them. At the same time, three motorcycles with two persons of each also arrived there. One person pointed pistol at the driver and pushed him inside and drove the balero deep. Other persons assaulted the complainant and security guard. They took away the entire cash. They robbed off the complainant and other two persons and fled away. The persons who arrived there have covered their face. They took away cash of Rs.43,50,000/- and mobile handsets of the complainant and other persons. Hence, the complaint was given on the basis of which the offence was registered. The applicant/accused was arrested on 29th May, 2015 and since then he is in custody. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent and has not committed any offence. The applicant/accused was not present at the time of incident. He is arrested on the basis of suspicion, as he was in touch with dacoities. The learned counsel submitted that only cash of Rs.2,000/- was recovered from the applicant and besides that there is no evidence against the

applicant/accused. The applicant is not connected with any persons of the gang of Mahesh Kamlapure.

4. Learned APP opposed the Application. She submitted that there is sufficient evidence against the applicant/accused. She submitted that applicant/accused has acted as a tipper, who informed the dacoities about the cash and thus have helped the co-accused to loot the cash. The applicant/accused has received money and the cash of Rs.2,000/- was recovered from his house. She further submitted that police have collected the details of call records of the applicant/accused wherein it shows that on the date of incident, he was constantly in contact with the co-accused. She further submitted that the applicant/accused is prosecuted under M.C.O.C. Act and thus there is bar under section 21 for release of the applicant/accused. Hence Bail Application is to be rejected.

5. Perused the FIR and the statements of witnesses so also the documents which are placed before this Court. As per the case of the prosecution, the applicant has given tip to the co-accused/dacoities about the transportation of cash of the bank and on the basis of this tip, the cash was looted by the dacoities. However, there is no *prima facie* admissible evidence that he was a tipper. The prosecution is relying on the confession statement of the co-accused, however, it is not recorded under M.C.O.C.

Act but it is recorded under section 27 of the Indian Evidence Act. The cash of Rs.2,000/- was found in the applicant's house and it is a very small amount. The evidence of only CDR is before the Court. I am of the view that considering the nature of the offence and the evidence placed before this Court, bar under section 21 will not come in the way of granting bail to this applicant/accused. Moreover, there are no criminal antecedents against this applicant/accused. Under such circumstances, I grant bail to the applicant/accused on the following terms and conditions:

ORDER

- i) Application is allowed.
- ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.40,000/- with one or two sureties in the like amount;
- iii) The applicant shall not commit any criminal activity while on bail;
- iv) The applicant shall not be associated with the Mahesh Kamlapure.
- v) The applicant shall attend all Court dates;
- vi) The applicant shall not abscond or leave India without prior permission of the trial Court and furnish their permanent address to the Investigating Officer alongwith documentary proof of their address;

vii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application for bail stands disposed of on above terms

7. The learned APP submitted that this order be stayed for 3 weeks, as he wants to challenge this order before the Hon'ble Supreme Court. The prayer is allowed. The order is stayed till 6th March, 2017.

(MRIDULA BHATKAR, J.)