

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1491 OF 2017

SARVAR MAQSOOD KHAN

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Sartaj Shaikh a/w. Mr.Jayant Parab, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent – State.

Mr.C.R.Thale, Senior Police Inspector, Traffic, D.N.Nagar, present in the court.

CORAM : A. M. BADAR, J.

DATE : 3rd NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.236 of 2014 registered with Byculla Police Station, for offences punishable under Sections 397, 394, 363, 341, 170 read with Section 34 of the Indian Penal Code (IPC), by this application is seeking his release on bail during pendency of his trial.

2 Heard the learned advocate appearing for the applicant / accused. She argued that in the charge-sheet, it is averred that the present applicant / accused has posed himself as a Police Officer during the course of dacoity, but there is no iota of evidence to justify this conclusion of the Investigator. It is further argued that apart from the First Informant, nobody else has identified the present applicant / accused, nor specific role is assigned to him. According to the learned advocate for the applicant / accused, on the day of the incident, the First Informant was not doing his regular work of his employer Nitesh Jain. He alleged that he was taking jewellery of Mukesh Jain. There is discrepancy in respect of the make of the car.

3 The learned APP opposed the application by contending that on a tip, police arrested the main accused Faizal Khan when he had been to the locality of the present applicant / accused for selling the stolen jewellery. During investigation it was found that before commission of the crime, at the time of commission of the crime as well as thereafter, several calls were

exchanged between the main accused Faizal and the present applicant / accused. Faizal called him on 49 occasions, whereas the applicant / accused called Faizal on 23 occasions.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet.

5 According to the prosecution case, First Informant Ruparam Prajapati was in employment of a jeweller named Nitesh Jain at Sussex Industrial Estate. On 16th August 2014, he was taking gold ornaments owned by his ex-employer Mukesh Jain. Witness named Roshanali was accompanying him. They were proceeding by a scooter. At Talekar Square, they were intercepted by accused persons, who came on a four wheeler vehicle. Both of them were dragged from the scooter. They were assaulted. They were taken in the four wheeler vehicle. A bag containing gold ornaments were snatched from witness Roshanali. This was done under the pretext of taking them to Police Station Mulund. It is averred in the First Information Report (FIR) lodged by the First

Informant Ruparam Prajapati that accused persons were questioning them whether they were doing illegal business. The accused persons were posing themselves as police. On the way, the First Informant and the witness were left by accused persons.

6 The applicant / accused on his arrest was subjected to Test Identification Parade (TIP), wherein, the First Informant has identified him. The incident is that of dacoity in which wounds were caused to members of the prosecuting party by assaulting them. The crime in question was committed by the dacoits by posing themselves as police and by intercepting the First Informant and the witness, who were transporting gold ornaments to the factory.

7 Considering the nature of crime and the manner in which it is committed, though it is reported that four other persons are released on bail by the learned Sessions court, I am of the considered opinion that the case in hand is not a fit case for releasing the applicant / accused on bail.

8 The application is, therefore, rejected.

(A. M. BADAR, J.)