

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

BAIL APPLICATION NO.1605 OF 2016

Pintya @ Sunil @ Ignas Deepak Waghmare ... Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr.V.B. Shivarkar for the Applicant

Mr.Y.M. Nakhwa, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 12, 2017

P.C. :

1. This is an application for bail under section 439 of the Criminal Procedure Code. One Sudhir Manik Shinde is the complainant who was travelling on Bombay-Pune Highway alongwith his friends on 22.11.2014. In the early morning of 23.11.2014, they stopped the car near Lonavla to answer nature's call. At that time, three persons between 25 to 30 years of age having their faces muffled approached them and robbed off the complainant and all the travellers in the car. They took away the ornaments of the female members and thus, committed robbery of approximately Rs.40,000/-. Pursuant to the FIR, the offence was

registered at C.R. No.157 of 2014 with the Lonavala city Police Station for the offences punishable under section 395 of the Indian Penal Code. Subsequently, the police during the investigation, found that the applicant/accused was involved in a number of cases of robbery on highway and after obtaining necessary approvals, the offence under section 3(1)(2) and under section 4 of the Maharashtra Control of Organised Crime Act was registered. The applicant/accused was arrested on 28.11.2014. Since then, he is in the prison and hence this Bail Application.

2. The learned Counsel for the applicant/accused has submitted that the police have wrongly invoked the MCOC Act against the applicant/accused. The applicant/accused is innocent. In the present case, though the complainant has identified him in the test identification parade, which was conducted on 28.4.2015 i.e., six months after the incident, it cannot be believed, because as per the statement of the complainant, the applicant/accused and the co-accused had covered their faces with cloth. He further submitted that the recovery of knife is also bogus. At the time of the spot panchanama, nothing was found by the police, however a recovery of knife was made from the same spot 10 days thereafter

i.e., on 2.10.2014. The learned Counsel further submitted that he is not a gang leader. The charge submitted by the police at the time of registering the application for bail before the Sessions Court discloses that the applicant/accused was involved with totally different persons in all the cases which are registered against him. He submitted that in 3 to 4 cases, which are mentioned in the charge, he has been acquitted. The applicant/accused is innocent and he is to be bailed out.

3. Learned Prosecutor opposed the Bail Application. He submitted that the applicant/accused is a gang leader, whose gang had indulged into various robbery cases. In all, there are five cases including the present case which are pending against the applicant/accused and they are of robbery and theft. He further submitted that the ornaments of the ladies who were robbed off, were found with the co-accused, who is a member of a gang and who is a co-accused in the present case.

4. Perused the FIR, the test identification parade and all the papers of the investigation which are produced herewith. The submissions of the learned Counsel that at the time of test identification parade, there were very bleak chances of the

complainant to identify the accused, though accepted, that is not the only evidence against the applicant/accused brought by the prosecution. The ornaments which are described as taken away from the ladies, who were co-travellers with the complainant, are of a peculiar type and the ornaments were found with the co-accused as per the recovery panchanama which has taken place on 1.12.2014. The victims have identified the ornaments. The record discloses that the applicant/accused has previously indulged into four robbery cases and they are within the jurisdiction of the Lonavala at the highway and most of them are on Bombay-Pune highway. The police have invoked the MCOC Act against the applicant/accused and thus, there is bar under section 21 of the MCOC Act to grant bail.

5. Considering the facts of the case, the criminal record of the applicant/accused, in my view, it is not a case for bail. I do not think that the applicant/accused will not indulge into a similar type of offence, if he is released on bail. Thus, considering section 21 of the MCOC Act, the Bail Application is rejected.

(MRIDULA BHATKAR, J.)