

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

CRIMINAL BAIL APPLICATION NO.1993 OF 2017

Ramesh Kalyan Kale

... Applicant

Vs

The State of Maharashtra

... Respondent

...

Mr. Kamlesh Y. Mali a/w S. R. Phanse for the Applicant.

Ms. Veera Shinde – APP for the State.

CORAM : A. M. BADAR, J.

DATE : 3rd OCTOBER, 2017

P.C. :

1. The applicant/accused in Crime No. 68 of 2016 for offences punishable under Section 307, 326, 395, 397, 459 read with 34 of the Indian Penal Code as well as under Section 37 (1) (A) of the Maharashtra Police Act. By this application is seeking his release on bail during pendency of the trial.

2. Heard the learned Advocate appearing for the applicant/accused. He submitted that the applicant is permanent resident of Osmanabad District and therefore, the learned Sessions Judge erred in holding that he is not permanent resident of Mumbai.

The learned Advocate further argued that nothing was recovered from the applicant and even Test Identification Parade was not conducted by the prosecution. He drew my attention to the fact that the Tahsildar had informed the investigator that it is not possible to conduct the Test Identification Parade.

3. The learned APP opposes the application. The learned APP by stating that the applicant had three antecedents.

4. I have carefully perused the charge-sheet. The crime in question came to be registered on the basis of a report lodged by injured Mamta. The incident in question took place in the night intervening 07.02.2016 and 08.02.2016 and exactly at about midnight. Informant Mamta and her husband Rohitkumar Desai, who is a senior citizen had gone to attend Satsang. They both returned to their apartment after 12.00 midnight. On the way to their flat at about 2.30 am, four decoits accosted them and assaulted them by means of stones causing serious injuries to the 1st Informant and her husband. The couple was robbed of a Mangalsutra costing Rs.50,000/-, Mobile phone, cash and other documents.

5. The applicant came to be arrested immediately from the vicinity of the place where the incident took place. Along with him his associates were also arrested. On going to know about the incident, the police team immediately undertook search at forest area of Shimpoli located at Korakendra Maidan. The search was undertaken with the aid of light of headlights of the vehicles as well as torches. The police team undertaking search met with stiff opposition. There was heavy pelting of stones from decoits, apart from using fire arms, against the Police Team participated in the search. Ultimately, Police indulged in cross firing and that is how present applicant as well as his two associates came to be apprehended from the vicinity. In that process, Police Personnel were also injured.

6. In view of this evidence against the present applicant, the question of not holding the Test Identification Parade pales into insignificance. Ultimately, The dock identification will be the substantial evidence. Prima facie, it is seen that the applicant who is resident of Osmanabad has no reason to justify his presence in the

vicinity and his subsequent arrest after firing and cross firing at the instance of decoits and police team. Considering the nature and gravity of the offence, the applicant is not entitled for bail.

7. The application is therefore rejected.

(A. M. BADAR, J.)