

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

BAIL APPLICATION NO.2189 OF 2016

Raja Bisram Kale @ Ashok Rajendra Shinde ... Applicant
Vs.
The State of Maharashtra .. Respondent

**with
BAIL APPLICATION NO.2365 OF 2016**

Raja Bisram Kale @ Ashok Rajendra Shinde ... Applicant
Vs.
The State of Maharashtra .. Respondent

Ms.Anjali Patil for the Applicant
Mr.Y.M. Nakhwa, APP, for Respondent – State in BA/2189/2016
Ms.Rutuja Ambekar, APP, for Respondent – State in BA/2365/2016

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 3, 2017

P.C. :

1. These two applications are preferred by the same applicant/accused and are being disposed of by this common order.
2. The applicant/accused is prosecuted under sections 307, 326, 395, 397, 459 r/w 34 of the Indian Penal Code and section 37(1)(A) of the Maharashtra Police Act. One Mamta Rohitkumar

Desai has given a complaint that on 7.2.2016, she and her husband returned home after a function at around midnight. At that time, when they entered their building, suddenly, four persons with their faces covered and wearing half pants and vests arrived there. They assaulted her and her husband and they robbed them of their jewellery and money. She shouted for help and before persons from the society reached there, the robbers ran away. Thereafter, she was taken to hospital, treated for the injury. She then registered the offence at C.R. No.68 of 2016 with Borivali Police Station, Mumbai on 8.2.2016. The applicant/accused alongwith the co-accused was arrested on the same day i.e., 8.2.2016.

3. Another offence was registered against the applicant/accused on the same day i.e., on 8.2.2016 at the instance of one police officer Mr.Sachin B. Parodwad working as a PSI, Borivali Police Station. It is the case of the complainant that on the early morning hours of 8.2.2016 at 2.45am, the police received information from the control room that some person belonging to one gang, namely, "Chaddi Baniyan gang" were moving in Satyanagar area. He went to one Satya Sai Krupa society and then, he received information that he found the blood

stains outside the society and on enquiry, he realised that one man and one woman were beaten up by the members of this gang and they were taken to hospital. Thereafter, the complainant alongwith the other police personnel took search of these robbers/assailants. At that time, they received information that some persons of the gang had entered one Kora Kendra ground. So, they went there. They found some suspicious movement near one lake in the trees and the police appealed to come out of the trees. At that time, there was stone pelting on the police. Somebody fired one round towards the police. Thereafter, the police also fired in self defence and the police could nab three persons. Two persons were injured. They were taken to hospital immediately. When they were searching the said premises, they found one more person hidden behind a tree. He was also arrested and in the personal search of that person, the police found one diamond mangalsutra, a gold chain, PAN card, Aadhar card and identity card of a Corporation of Mamta Rohitkumar Desai, a cell phone, pearl ornaments, a female purse, one pouch, a gold bangle, gold chains. All these articles were seized by the police. The police also found two sickles, one revolver made in Germany alongwith two rounds and one empty.

4. The police arrested the said person and all the four persons were taken in custody on 8.2.2016. The offence was registered at C.R. No.69 of 2016 with the Borivali Police Station, Mumbai on 8.2.2016 under sections 353, 332, 307, 143, 144, 145, 147, 148, 149, 109 r/w section 34 of the Indian Penal Code and under sections 3, 4, 25 and 27 of the Indian Arms Act and under section 37(1)(A) r/w section 135 of the Maharashtra Police Act. Hence, these Bail Applications.

5. The learned Counsel for the applicant/accused has submitted that the applicant/accused is innocent. Nothing was recovered from the applicant/accused. He was not present. He has not committed any offence. The police have falsely implicated him in these two cases. Recovery of the articles is from the other accused and not from the applicant/accused. The learned Counsel further submitted that the police did not conduct any test identification parade in the case where the complainant is Mamta Desai. It is further submitted that there is no recovery of any weapon from him. The applicant/accused is behind the bars since last one year and therefore, he be released on bail.

6. The learned Prosecutors have opposed the Bail Applications. They submitted that the applicant/accused was arrested red handed with the other accused. They relied on the injury certificate of the complainant Mamta Desai and her husband Rohitkumar Desai. The learned Prosecutor further submitted that muddemal articles were recovered from the co-accused who was arrested immediately. It is further submitted by the learned Prosecutors that the applicants/accused was convicted in C.R. No.1 of 2006 for 10 years for the offences punishable under sections 397, 395, 342 of the Indian Penal Code. The learned Prosecutors argued that after completion of the sentence, he came out in the year 2016 and immediately, he alongwith the gang started committing offences. Besides these two cases, three more cases are registered against the applicant/accused as under:

- i) C.R. No.40 of 2016 of MHB Police Station under sections 395, 380 and 457 of the Indian Penal Code.
- ii) C.R. No.30 of 2016 of Nayanagar Police Station under sections 395 and 397 of the Indian Penal Code.
- iii) C.R. No.13 of 2016 of Kalyan Bazarpeth Police Station under sections 394 and 457 r/w section 34 of the Indian Penal Code.

7. The learned Prosecutors have, therefore, submitted that the Bail Applications ought to be rejected.

8. After going through the papers, *prima facie*, it appears that sufficient evidence to hold that the applicant/accused has committed these two offences one after the other. There is immediate recovery and immediate arrest. Considering the criminal record of the applicant/accused as pointed out by the learned Prosecutors, I am not inclined to grant bail.
9. Bail Applications are accordingly rejected.

(MRIDULA BHATKAR, J.)