

nsc.

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

CRIMINAL BAIL APPLICATION NO.2383 OF 2016

Ashpak @Sannu Rabiullah Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Amit Munde, for the Applicant

Mr.S.K.Shinde, Government Pleader, a/w Mr.Deepak Thakare, A.P.P for
the Respondent-State

Police Havildar.36 – S.G.Bhorade, Talegaon Dabhade Police Station, Pune
Rural.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th APRIL, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No.295 of 2014 registered with the Talegaon Dabhade Police Station, Pune Rural, for the alleged offences punishable

under Sections 395, 397 and 342 of the Indian Penal Code and under Section 3(1)(ii) (4) of the Maharashtra Control of Organized Crimes Act (MCOCA).

3. Learned Counsel for the applicant seeks bail on the ground of parity. According to him, some of the co-accused have been enlarged on bail by the learned Special Judge (Under the MCOC Act), Pune, vide order dated 20th May, 2016. He submits that there is no material to connect the applicant with the alleged offences. He submitted that the applicant has no antecedents and that the only material as against him is a confessional statement of the co-accused. He submitted that there is no recovery of any deadly weapon, at the instance of the applicant. He submitted that although the applicant has been identified in the identification parade, it is evident from the statement of the witnesses i.e. Guards, that the accused had come to the spot with their faces covered (with handkerchiefs) and as such the identification is a farce.

4. Learned Government Pleader opposed the application. He pointed out that CDR record shows that all the accused, who are residents

of Uttar Pradesh, were in touch with each other from 20th September, 2014 to 24th September, 2014. Learned Counsel for the applicant submitted that the telephone number allegedly used by the applicant does not belong to him and that the same belonged to one Kamble. He submitted that there is nothing on record to show that the applicant was using the said mobile phone.

5. Perused the papers. The incident in question has taken place on 23rd September, 2014. The complainant is Sandeep Patil, who was working as a Manager in KLT Automotive and Tubular Products Limited. He has stated that on 24th September, 2014, the security guard of the said factory informed him that between 2.00 to 4.00 a.m., 5 to 6 unknown persons aged between 25 to 30 years, entered the factory and that the said persons were armed with deadly weapons, i.e. iron rods and sticks etc., and that the said persons threatened the security guards and stole the goods from the paint shop of the factory as well as valuables to the tune of Rs.1,18,000/-. It appears that there is a confessional statement of co-accused – Maqsood Khan. In the said confessional statement, co-accused Maqsood Khan has disclosed the applicant's name alongwith the other co-

accused. It also appears that the applicant has been identified in the identification parade. Whether or not the witnesses had any opportunity to see the faces, of the accused or not is a matter which will be decided by the trial Court. The fact remains that out of the 4 eye-witnesses, 2 eye-witnesses have identified the applicant. Learned Counsel for the applicant has also sought bail on the ground of parity. There can be no parity with co-accused – Ismail Laljada Khan, (Original Accused No.6), considering that it is wrongly observed by the learned Special Judge in para 14 of the order dated 20th May, 2016 that T.I. parade is not conducted. In that view of the same, co-accused – Ismail Laljada Khan, was enlarged on bail. In the present case, the applicant has been identified in the identification parade and hence there can be no parity with the co-accused. The applicant is a resident of Uttar Pradesh and hence the possibility of the applicant absconding also cannot be ruled out. The applicant has been in custody since the date of his arrest i.e. 26th September, 2014.

6. Considering the material qua the applicant, it cannot be said that the accused is not guilty of the offences with which he is charged.

7. Hence, the Application for bail is rejected and disposed of as such. However, since the C.R is of the year 2014, the trial of the applicant is expedited. The learned Judge is requested to conclude the trial as expeditiously as possible and in any event before June 2018. If for no fault of the applicant, the trial does not conclude within the said period, the applicant is at liberty to renew his prayer for bail.

8. It is made clear that the observations made herein are *prima facie* and are confined to this application.

(REVATI MOHITE DERE, J.)