

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 215 OF 2018

ModSingh Vagatsingh Rajput

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Saurabh Rane for the Applicant.

Smt. J.S. Lohokare APP, for the Respondent-State.

Mr. Santosh Chavan, API, Azad Maidan Police Station.

CORAM : A. S. GADKARI, J.

DATE : 10th JULY, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No.330 of 2016 dated 4th October, 2016 registered with Azad Maidan Police Station, under Sections 342, 395, 397, 412, 452, 120(B) of the Indian Penal Code, Section 3 read with Section 25 of the Indian Arms Act and 37(1) read with Section 135 of the Maharashtra Police Act now culminated into Sessions Case No. 134 of 2017.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the charge sheet.

The Applicant is Accused No.3, in the present crime.

3 The prosecution case in brief is that, on 4th October 2016 between 7.15 p.m. to 7.30 p.m. four unidentified accused persons committed criminal trespass into the office of the first informant Shri Mahesh Thanvi situated at Dhobi Talao, Mumbai and at the point of knife and pistol committed decoity of cash of Rs.75,00,000/- and mobile phones.

 During the course of investigation, the Applicant came to be arrested on 16th October 2016 and after completion of investigation, police have submitted charge-sheet.

4 The prosecution has relied on 4 circumstances against the Applicant namely- (i) test identification parade; (ii) that the Applicant deposited cash amount in the bank accounts of his friends so also in his own account; (iii) that, a cash of Rs.1,00,000/- was seized from the house of the Applicant under Section 27 of the Evidence Act; and (iv) CDR record and CC TV footage of the scene of offence.

5 As far as the test identification parade is concerned, no witness has identified the Applicant in the said test identification parade.

 The deposit of cash by the Applicant in the accounts of his friends, so also, in his own account totaling to Rs.3,59,000/- is

concerned, the prosecuting agency till date has not established the link between the said cash deposited by the Applicant and the cash allegedly looted by the Applicant in the said crime and the same will have to be established at the time of trial.

As far as the seizure of cash of Rs.1,00,000/- from the house of the Applicant is concerned, there are no identity marks on the bundle of the said currency, from which it can be discerned that, the said cash was part and parcel of the proceeds of the present crime., i.e. the cash allegedly looted by the Applicant and other co-accused.

The call detail record of the mobile phone of the Applicant showing his presence at the scene of offence, at this stage, cannot be termed as a conclusive proof of the complicity of the Applicant and the prosecution will have to prove the said fact at the time of trial, by leading cogent evidence in that behalf.

The last circumstance of C.C. TV footage, wherein the Applicant is seen with a bag in his hand out side the office of the informant and leaving it, prima facie is the only circumstance against the Applicant, at this stage.

6 The Applicant is arrested on 16th October, 2016 and since

then, he is in jail. The police have completed the investigation and submitted charge sheet.

In view of above, the Applicant can be released on bail.

Hence, the following order.

- a) The Applicant be released on bail in CR No.330 of 2016 dated 4th October, 2016 registered with Azad Maidan Police Station, now culminated into Sessions Case No. 134 of 2017 on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- b) Before his release from jail the Applicant shall submit the documents of his residence from the State of Rajasthan, so also, from Mumbai before the Investigating Officer.
- c) After his release from Jail, the Applicant shall attend the concerned police station i.e. Azad Maidan Police Station on every alternate Monday of the month between 11.00 a.m. and 1.00 p.m. initially for the period of one year and thereafter, on every first Monday of the month between 11.00

a.m. and 1.00 p.m. till the conclusion of the trial.

- d) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- e) Any two consecutive defaults in complying with the afore-stated conditions will attract the provisions of cancellation of bail.
- f) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)