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

CRIMINAL BAIL APPLICATION NO.476 OF 2018

Maksood Jumman Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms.S.T.Mishra, for the Applicant.

Ms.A.A.Takalkar, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 22nd MARCH, 2018

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.I-143 of 2017 registered with the Kasarvadavli Police Station, Thane, for the alleged offences punishable under Sections 399, 401, 457 of the Indian Penal Code and under Sections 3, 25 of the Arms Act and under Sections 37(1) 135 of the Maharashtra

Police Act.

3. Learned Counsel for the applicant seeks bail on the ground of parity. She submitted that the applicant stands on a better footing than that of co-accused – Barkat Aabil Shaikh, who has been enlarged on bail by this Court vide order dated 12th March, 2018. She submitted that the applicant was not present at the spot, when the police apprehended the other co-accused and seized certain articles from their possession. She submitted that in the personal search, no article was found in his possession. She further submitted that the applicant has no antecedents.

4. Learned APP opposed the application. She submitted that the role of the applicant is distinct and different from that of co-accused – Barkat Aabil Shaikh, who has been enlarged on bail by this Court.

5. Perused the charge-sheet. According to the prosecution, the incident took place on 22nd July, 2017, when accused were committing lurking house trespass, in order to commit theft in Maharashtra Bank by entering into the adjacent closed building of Raj Motor Driving School, by

breaking its lock. Pursuant thereto, the police spring into action and apprehended Shahajan Ali and Mohammad Manarul Shaikh and Shahajahan Fajlu Shaikh, in the building of Raj Motor Driving School. The police seized one iron iron katawani each, from the possession of accused – Shahajan Ali and Mohammad Manarul Shaikh. The police also seized one drill machine, iron spanner, one plier, screw driver, gas cutting pipe alongwith regulator, oxygen regulator, eight fitting clips, T spanner, rubber pipes, from the possession of the said accused. Co-accused – Sakim Shaikh was standing outside and keeping a watch, was also apprehended. It appears that on seeing the police, co-accused – Rejaul Akbar Shaikh, Shaifuddin Rejabali Shaikh, Juganu Khalek Shaikh, and the applicant, who were sitting in a Swift Dezire Car, outside the place of the incident, fled from the spot, in the said car. Pursuant thereto, the police chased the said vehicle and the said accused including the applicant were apprehended near Ghoti Toll Plaza, by the staff of Ghoti Police Station. From the said vehicle, in which the applicant and the other co-accused were travelling, the police seized two oxygen cylinders, one small gas cylinder and a regulator. *Prima facie*, it is apparent, that all the accused had planned to commit the aforesaid offences. As far as parity is concerned, there is no parity with co-accused- Barkat

Aabil Shaikh, who has been enlarged on bail by this Court.

6. It is pertinent to note that the allegations as against co-accused – Barkat Aabil Shaikh, was that he had supplied oxygen cylinder and other articles to the co-accused. However, the statement of the owner of the Agency – Devram Jalora, shows that the said gas cylinder and oxygen cylinder was purchased by Saifuddin Shaikh and not by Barkat Aabil Shaikh. Hence, there is no parity with co-accused-Barkat Aabil Shaikh. The applicant is a resident of Jharkhand and the possibility of him absconding cannot be ruled out.

7. Considering the *prima facie* material, as against the applicant, this is not a fit case to enlarge the applicant on bail.

8. Hence, the application for bail is rejected and disposed of as such.

9. It is made clear that the observations made herein are *prima facie* for deciding the aforesaid application, and the learned Judge shall

decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)