

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

BAIL APPLICATION NO.1355 OF 2017

Sahil Rajesh Pillay		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Sankalan i/by Mr. Subhash Hulyalkar for the Applicant.
Ms. S.S. Kaushik, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 13th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 29th September 2016 in Crime No.169 of 2016, registered at Khadki Police Station, District Pune, for the offences punishable under Sections 395, 397, 364, 427, 506 of Indian Penal Code, under Section 4(25) of Arms Act, under Section 37(1) read with 135 of Maharashtra Police Act and under Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA).

3 It is the case of the prosecution that on 21st July, 2016, the complainant and his brother Pritesh alias Prabhu were standing in front of Das Garage at Khadki, Pune. The applicant alongwith co-accused persons i.e. 4 to 5 other persons had been to Ganesh Mitra Mandal. The applicant alongwith other co-accused were armed with sickle, they assaulted the complainant, snatched his gold chain and the accused while fleeing from the spot had also assaulted the people who had gathered on the spot including two ladies and the people who had attempted to rescue the complainant.

4 According to the learned counsel for the applicant, the provisions of MCOCA would not apply for the simple reason that the applicant is not prosecuted in any other offence. Learned counsel for the applicant submits that in view of the fact that the provisions of MCOCA may prima facie not be attracted, the applicant deserves to be enlarged on bail. Learned APP submits that there are more than four charge-sheets filed against the prime accused Raju and according to the material collected in the course of investigation, it appears that the present applicant was residing with the main accused and was participating with him in all his acts. Learned APP submits that in the course of investigation, the statements of Avinash Wankhede is recorded under Section 164 Cr.P.C., who is a co-accused. That Avinash Wankhede has specifically disclosed in his statement under Section 164 Cr.P.C. that he happens to be a good

friend of the present applicant since they are all residents of the same area and that he was working with the said gang. Participation and role is specifically ascribed to the present applicant. It is further submitted that on 21st July, 2016, the applicant had assaulted Prabhu with a sickle. Similarly the statements of the other co-accused also would reveal that the present applicant has assaulted Prabhu with a sickle.

5 Taking into consideration the papers of investigation and more particularly the statements of co-accused under Section 164 Cr.P.C., which are admissible in evidence, this Court is of the opinion that the applicant does not deserve to be enlarged on bail. The application being sans-merits stands rejected.

6 The observations made hereinabove are prima facie in nature and are restricted to the application under Section 439 Code of Criminal Procedure and the trial Court shall not be influenced by the same.

(Smt. Sadhana S. Jadhav, J)