

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

BAIL APPLICATION NO. 1888 OF 2017

Akash Balasaheb Khomane.

... Applicant.

Versus

The State of Maharashtra.

... Respondent.

Mr. Samir A. Vaidya a/w. Mr. Kaustubh N. Marathe, advocate for Applicant.

Mr. S.R. Agarkar, APP for State.

Mr. Suhas Garud, DYSP, Haveli Division.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : FEBRUARY 1, 2018

P.C.:

1 Heard the learned Counsel for the applicant and the learned PP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 29/5/2015 in Crime No. 83 of 2015 registered at Jejuri Police Station, Pune for the offence punishable under section 395 of the

Indian Penal Code and under section 3, 4 read with Section 25 of the Indian Arms Act and under section 3(1)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 24/5/2015 one Mahesh Patane who was working as Junior Executive of Checkmate services Private Limited, Baner, Pune lodged a report at the police station alleging therein that Bank of Maharashtra had outsourced certain services to Checkmate Services and one of the job was to deposit cash in ATM Machines installed at various places. The company owned Bolero Jeep bearing registration No. MH 14 CP 9453.

4 On 24/5/2015 at about 10.30 a.m. Vault Officer Mr. Tayade and Gidde had directed the first informant to deposit an amount of Rs. 99,50,000/- in different ATM machines. One Suraj Pavale was given as custodian to accompany the first informant. There were two

security guards. One of them was Sathe. That they had deposited some cash at various ATM and when they were passing from Neera to Morgaon and when they crossed village Gulunche suddenly one white colour Esteem car which was standing by the side of the road had accosted the bolero jeep and obstructed the way. Two persons had alighted from the said car. They were followed by 3 motor cycles. All the persons had taken charge of Bolero Jeep. They had forced them to alight. They were armed with revolver and were assaulting the complainant as well as his associates with the revolver on the way. Thereafter, they had threatened Suresh Pawale and had snatched bag containing Rs. 43,53,200/- from his custody. The first informant had given description of the persons who had taken charge of the bolero jeep. It was specifically stated that the said persons had put on mask on their faces.

5 It was the case of the prosecution that accused Suraj Pavale was the tipper who was associated with dacoits and he had given a tip to the said dacoits that Bolero Jeep containing cash would be

passing by that road at that particular time and hence, he was arrested. Suraj Pawale has been enlarged on bail by this Court (Coram : Mrs. Mridula Bhatkar, J) vide order dated 8/2/2017. It is observed that there is no material to indicate that Suraj Pawale had acted as a tipper.

6 The learned Counsel submits that by virtue of doctrine of parity, the present applicant also deserves to be enlarged on bail.

7 Upon perusal of papers of investigation, it appears that there is a recovery of one cell phone containing dual SIM card of Nokia company from the applicant and a cash of Rs. 2,000/-. It is pertinent to note that although the cell phone was seized, the investigating agency has not taken the call details record in order to establish that the present applicant was in contact with either Suraj Pawale or the other accused persons for the reasons best known to them. It is apparent on the face of record that this is an half-hearted investigation.

8 The learned APP submits that the applicant is an accused in Crime No. 4 of 2015 registered at Dattawadi Police Station for offence punishable under section 392 read with section 34 of the Indian Penal Code.

9 At this stage, learned Counsel for the applicant submits that the applicant has been acquitted vide Judgment and Order dated 21st March, 2016 in R.C.C. No. 2232 of 2015. According to the prosecution, gang is led by one Mahesh Chandrakant Kamlapur. However, the applicant has not been charge-sheeted along with Mahesh Chandrakant Kamlapure in other cases. There is no cogent material to show that he belongs to gang of Mahesh Chandrakant Kamlapure. Recovery of the cell phone is futile as it was neither sent for Forensic examination, nor CDR has been obtained, nor contents of the said phone have been reduced into panchanama. In fact, at the stage of filing of charge-sheet also, it is incumbent upon the investigating agency to make out a specific case against the accused,

especially, if he is being prosecuted under the provisions of MCOC Act. The sanctioning authority has also not looked into this aspect rather investigating agency has not produced sufficient material before the sanctioning authority. It is heart-breaking to observe that in fact, most of the matters investigating agency are carrying out half-hearted investigation even at the stage of trial. The Court cannot go beyond the papers of investigation and there is rise in acquittal of the accused.

10 Be that as it may, in the facts of the case, it would not be even necessary to record satisfaction under section 21(4) of the MCOCA. The applicant deserves to be enlarged on bail for the lapses in the investigation.

11 However, the observations made hereinabove are restricted to application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

12 Hence, following order is passed :

ORDER

- (i) The application is allowed.
 - (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.
 - (iii) The applicant shall report to the concerned police station on 1st and 3rd Sunday of each month till framing of charge.
 - (iv) The applicant shall not tamper with the evidence.
- 13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)