

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

CRIMINAL BAIL APPLICATION NO.566 OF 2019

Intiyaz Mohammed Ali Lashkare

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Md. Arshad Nehal, Advocate for Applicant.
- Mr.S.R. Agarkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th JUNE, 2019

P.C. :

1. The Applicant is seeking bail in connection with C.R.No.240/17 registered with Sinhgadh Police Station, Pune, under sections 394 r/w 34 of the Indian Penal Code.
2. The investigation is over and FIR is resulted in Sessions Case No.756/17 before the Additional Sessions Judge, Pune. The FIR is lodged by the victim Rohan Ajit Joshi on 10/07/2017. It is the case in the FIR that at about 01.30 a.m. to 02.00 a.m. when he was at Rajaram Bridge, at that time, he could not drive

his motorcycle any further as the petrol tank became empty. At that time, two persons came there and forcibly removed mobile phone from his pocket. When he was trying to resist they came back and one of them assaulted the informant on his head, face, eyes and hand. At that time, the people in the area apprehended them on the spot and handed them over to the police, who had reached the spot shortly. The first informant was taken to hospital, where he was treated. Thereafter the first informant has lodged his FIR.

3. Investigation in this offense is completed. Charge-sheet is filed.
4. Heard learned Counsel Mr.Md.Arshad Nehal for the Applicant and learned APP Mr. S.R. Agarkar for the State.
5. Learned Counsel for the Applicant submits that offence u/s 397 of I.P.C. is not made out against the present Applicant. He relied on a judgment of the Hon'ble Supreme Court in the case of **Dilawar Singh Vs. State of Delhi, reported in (2007)**

12 Supreme Court Cases 641, to contend that offence u/s 397 of IPC is not made out against the present Applicant as he had not assaulted the victim.

6. Learned APP pointed out that the victim had suffered injuries which is evident from the medical certificate, which shows that there was fracture of hand and facial bones besides other head injuries.
7. Though FIR and the other statements indicate that the companion of the Applicant assaulted the victim with iron rod, the fact remains that both of them had come together and had robbed the victim in the night time. Act of the present Applicant cannot be separated from that of his companions and therefore serious offence at least u/s 392 of IPC is made out. The Applicant does not deserve to be released on bail. Hence the application is rejected.

(SARANG V. KOTWAL, J.)