

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 775 OF 2015

Rohan Chandrakant Gaikar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Chaitrali A. Deshmukh, advocate for Applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 20, 2015

P.C.:

1 Heard the learned Counsel appointed for applicant and the learned APP for State. Perused papers.

2 This is an application through jail under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 6/3/2014 in Crime No. 175 of 2014 registered at Santacruz Police Station for offence punishable under Section 143, 144, 145, 147, 149, 450, 387, 427, 307, 120B, 506(II) of the Indian Penal Code read with

Section 4 and 25 of the Arms Act and Section 3(1)(ii), 3(2) and 3(4) of MCOCA Act.

3 It is the case of the prosecution that on 1st March, 2014 first information report was lodged by Shri Dynaneshwar Bhivson Javjal at Santacruz Police station alleging therein that he is working on the site of HDIL company. The office is situated at shop No. 47, Pioneer-2, Daulat Nagar, Santacruz. HDIL company has taken a project and the construction is in progress on the adjacent site. That on 1/3/2014 he was present in the office. The security guard was standing outside his cabin. At about 3.45 p.m. he heard noise of breaking of glasses and window pane of his office and there was hue and cry. He heard the people hurling abuses. He came out of the office to see what was happening. He saw 10 to 15 people armed with iron sickles and iron rods entering into his office. Some of the miscreants had muffled their faces and had put on caps. The handkerchief of one of the person had slipped and the complainant identified him as Ajmal, a resident of Daulatnagar. He then identified associates of one Zulfikar namely Asif, Sayeen Khan @ Mavya, Sufiyan. Ajmal was armed with

a sickle. Asif was armed with iron rod. Mavya was armed with stump and Sufiyan was armed with wooden log. They were proceeding towards him and asking him the whereabouts of Yusuf Pathan and why he had not paid money. The miscreants were attempting to assault the complainant. At that juncture, the security guard fired in the air. The miscreants had caused damage to the office furniture and had fled from the spot. Surrounding shops in close proximity had pulled down their shutters. One of the adjacent shop was also attacked.

4 The complainant could identify some of the assailants. According to him, some of the accused had visited the office in November, 2013 and were enquiring about Yusuf Pathan. On every occasion, they used to say that the brother of Zulfikar is still in jail and Rs. 8 Lakhs are necessary for releasing him and therefore, they were demanding money from Yusuf Pathan. According to the complainant, Zulfikar and his associates had also attacked the house and vehicle of Yusuf Pathan in Lohia Nagar. It is specifically alleged that all the accused were working at the behest of Zulfikar and were

troubling the complainant and Yusuf Pathan since 2013. The name of the applicant does not find place in the FIR.

5 By an order dated 31st May, 2014 the Commissioner of Police, Brihan Mumbai in exercise of his powers under section 23(2) of the MCOC Act had accorded sanction to prosecute the accused in C.R. No. 175 of 2014 under Section 3(1)(ii), 3(2), 3(4) of M.C.O.C. Act, 1999.

6 The investigation is completed and charge-sheet is filed and the case was registered as MCOC Special Case No. 4 of 2014.

7 The applicant has been identified in the test identification parade by five witnesses. Co-accused Ajmal Khan, Irfan, Kadir Ansari have shown involvement of the applicant in their confessional statement. The applicant is an accused in Crime No. 212 of 2009 registered at Bhoiwada Police Station for offence punishable under Section 302, 397, 394, 452 read with Section 34 of the Indian Penal

Code. This would show that the applicant herein has criminal antecedents.

8 The Hon'ble Apex Court in the case of **State of Maharashtra v/s. Vishwanath Maranna Shetty** has held that

“a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under [Section 439](#) of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of [Section 21](#). Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions, viz., (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of [Section 21](#) regarding the accused being not guilty, has to be based on “reasonable grounds”. Though the expression “reasonable grounds” has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects

mentioned in clauses (a) and (b) of sub- section (4) of [Section 21](#) is sine qua non for granting bail under MCOCA.

9 In the present case, it would be difficult to record a subjective and objective satisfaction that the applicant may not commit any offence while on bail. In addition, the complicity of the accused is established by the fact that he has been identified at test identification parade. In view of this, the applicant would not be entitled to be enlarged on bail by virtue of doctrine of parity. The application being sans merit stands rejected and disposed of accordingly.

10 The learned Counsel appointed for the applicant has put in the best of the efforts. The professional fees is quantified at Rs. 1500/- to be paid to the learned Counsel within a period of 3 months.

11 Office to communicate this order to the applicant who is in jail.

(SMT. SADHANA S. JADHAV,J)