

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1606 OF 2014**

Hanif Shaikh @ Hanif Menda	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Taraq Sayyed i/b Ms. Sartaj Shaikh for the Applicant

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

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 4th SEPTEMBER, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-65 of 2012 registered with the Bazar Peth Police Station, Kalyan, for the alleged offences punishable under Sections 302, 364(A), 201, 34 of the Indian Penal Code, 1870 and under Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act ('MCOC Act').

3. According to the prosecution, deceased Haris @ Bittu Shaikh Sultan Shah was working with Barkat Pathan (original accused No. 5), Amjad Pathan (original accused No. 1) and Rehamat Pathan (original accused No.2), as a driver. It is alleged that two months prior to the said incident, Barkat Pathan (original accused No. 5) had sent the deceased to Ajmer to bring a consignment of 30 kgs of Hashish. However, the said consignment went missing. According to the prosecution, Barkat Pathan (original accused No. 5) was under an impression that the said 30 kgs of Hashish was stolen by the deceased and he had made money on it. It is this act which gave rise and was the alleged motive for killing the deceased. It is alleged that after killing the deceased, his body was burnt in the Igatpuri jungle.

4. Learned Counsel for the applicant submitted that a missing complaint was lodged on 16th February, 2012 by the father of the deceased, wherein, he has stated that his son left home on 12th February, 2012 at 12:30 p.m, stating that he was going out. As Haris did not return, they searched for him and as Haris could not be found, a missing complaint was lodged by his father. Learned Counsel for the applicant submitted that it appears

from the missing report, that the deceased had left the house voluntarily. He submitted that the complainant – Shaheen Pathan, mother of the deceased in her complaint dated 6th March, 2012, had disclosed to the contrary i.e. Barkat Pathan (original accused No. 5) had called her son and that she had seen him sit in the car, next to Amjad Pathan (original accused No. 1). Learned Counsel for the applicant submits that infact, in the missing complaint, lodged on 12th February, 2012, the father of the deceased has not disclosed that Barkat Pathan (original accused No. 5) had called his son and that his wife Shaheen had seen their son, sit in a car next to Amjad Pathan (original accused No.1). According to the learned Counsel for the applicant, there is no material as against the present applicant to connect him with the alleged offence. He submitted that neither is there any confessional statement of the applicant recorded under Section 18 of the MCOC Act nor is there any recovery at his instance. He submitted that according to the prosecution, the material *qua* the applicant is a confessional statement of co-accused – Baban @ Babdya Wani (original accused No. 10) recorded under Section 18 of the MCOC Act and statements of two eye-witnesses. He submitted that a perusal of the confessional statement of the co-accused shows that no specific role has

been assigned to the present applicant. As far as the two eye-witnesses are concerned, he submitted that their statements reveal that the applicant was allegedly standing and shouting “*Maro Maro*” along with other co-accused. He further submitted that the applicant has no antecedents and that the only case registered against him was one lodged subsequent to the lodging of the present C.R.

5. Learned A.P.P opposed the bail application. She submitted that apart from the confessional statement of the co-accused, which shows that the applicant was present when the deceased was assaulted, there are the two eye-witnesses who have specifically stated that the applicant was present along with others and was shouting ‘*Maro Maro*’ when the deceased was being assaulted.

6. Perused the confessional statement and the statements of the two eye-witnesses. A perusal of the statements of the two eye-witnesses shows that the said witnesses had seen the incident of assault on the deceased by the accused. They have stated that the deceased was begging for his life and that the present applicant along with others was standing

and shouting '*Maro Maro*', when some co-accused were assaulting the deceased.

7. In view of the aforesaid direct evidence in the form of the eye-witnesses, it cannot be said that there are no reasonable grounds for believing that the applicant is not guilty of the alleged offence. Considering the material on record, the application is rejected. However, the trial is expedited.

8. The learned Sessions Judge shall make an endeavour to dispose of the case as expeditiously as possible, preferably within one year from the date of the receipt of this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.