

2. Learned counsel for the applicant submitted that the applicant has been behind bars since 26/03/2012 and the cases have not made any progress. He made statement on instructions that Charge is also not framed. He submitted that in the previous matters, the material probably was not correctly appreciated by presuming that the provisions of the Maharashtra Control of Organized Crime Act, 1999 [for short, 'MCOCA'] are used against the applicant.

3. Charge sheet is filed against the present applicant and others for the offences punishable u/ss 302, 120-B, 201,328,109,114 read with 34 of the Indian Penal Code. The main accused Imran Mehendi and his gang committed many murders as hired killers. In the present case, murder of son of one police constable was committed as hired killer. The material as against the present applicant is the statements of co-accused that he was present when the conspiracy was hatched. The material also is available in respect of recovery of metal rod and prosecution wants to prove that it is part of fire and present applicant was manufacturing fire arms. Admittedly, in the present offence, no hired arm is used. This Court has given sufficient time to the A.P.P. to show that as to how the aforesaid material can be used to detain the applicant behind bars and as to whether the provisions of MCOC Act are used against the present applicant. The A.P.P. submitted that the said Act is not applied in the present case.

4. In other case for the offence committed by this gang, provisions of MCOC Act was used but learned counsel for the applicant made statement that in that case the applicant is granted bail. It is not disputed that there was only one case under the provisions of MCOC Act against the applicant and statement is made that he is on bail in that case. In view of these circumstances, this Court holds that it is not desirable to keep the applicant behind bars.

5. In the result, I pass the following order.

- [i] The Criminal Application is allowed.
- [ii] The applicant Zubair Khan s/o Shabbir Khan be released on bail on his executing P.R. Bond of Rs.1 Lakh with one solvent surety in the like amount.
- [iii] The applicant should not tamper with the prosecution witnesses.
- [iv] The applicant is not to leave Aurangabad district without prior permission of the Sessions Court. If he is having passport, he is to deposit the same with the concerned police station.
- [v] The applicant is not to leave the country.
- [vi] The applicant is expected to co-operate with the investigating agency.

[T.V.NALAWADE, J.]