

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

4 CRIMINAL APPLICATION NO. 2756 OF 2016

HABIB KHALED HABIB MOHAMMAD CHAUS

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Rameez M. Shaikh, Advocate for Applicant.

Mr. S.P.Sonpawle, A.P.P. for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 8th AUGUST, 2016

ORAL ORDER :-

. The application is filed for bail on the ground of parity and also on other grounds. Heard both sides.

2. The application filed by the applicant for bail was rejected by this Court at least for 2 times and the last order was made on 15/01/2015. It can be said that 2 times bail is refused, though second bail application was withdrawn.

3. Learned counsel for the applicant submitted that this Court granted bail to one Zuber Khan by Order dated 20/04/2016 in Criminal Application No. 1367 of 2016 and to

one Sk. Hasan in Criminal Application No. 1369 of 2016 on 27/04/2016 from the same crime. He submitted that the evidence available against the present applicant is not much different and so for the said reason it is not desirable to keep the applicant behind the bars. He submitted that the present applicant is behind the bars since 26/03/2012.

4. In the past when this Court had refused bail to the present applicant, it was presumed that the provisions of MCOC Act were applicable. In view of this circumstance, this Court further presumed that the statements of co-accused and the accused can be used against the present applicant. However, the submissions made now show that the provisions of MCOC Act are not used in the present matter, though in one other case, MCOC Act is used against the present applicant. In other case, present applicant got bail on default ground.

5. There are allegations against the present applicant that he is member of gang of one Imran Mehendi, who had formed gang for hired killing and he was making money as hired killer. In the present application, one police constable had hired Imran Mehendi to finish Nilesh, son of this police constable. Amount of ₹ 2.5 Lakh was paid. This amount was paid for commission of murder of wife and son Nilesh of said police constable. Both these persons were finished by the gang of Imran Mehendi.

6. There is allegation against the present applicant in the present matter that on the day when Nilesh was picked

up at S.T. stand, he was taken to the place where present applicant was waiting and he gave some drink viz. Lassi to Nilesh and there was some substance mixed in Lassi and due to that Nilesh became unconscious. After that Nilesh was taken to a distant place by Imran Mehendi and his persons and then murder of Nilesh was committed.

7. It is the allegation that after giving the aforesaid substance to Nilesh, present applicant was not with the gang of Imran Mehendi, but some members of said gang went to the distant place where murder was committed by them. In the F.I.R. and in the statements of the accused, there is such version. Learned A.P.P. was asked to satisfy this Court as to how the circumstance that in one other case MCOC Act is used, can be used against the present applicant to detain him behind the bars. He was also asked to satisfy as to whether the so called statements recorded in other matter can be used in the present matter. Learned A.P.P. submits that separate statements of the present applicant and other accused were recorded in the present matter. Learned counsel for the applicant submitted that in view of the provisions of Sections 25 and 26 of the Evidence Act, such statements of the co-accused or even of the present applicant can not be used against the present applicant. The conspiracy can be proved on the basis of circumstances. There needs to be some material with the prosecution on the basis of which the present applicant can be linked at least with Imran Mehendi.

8. Due to the aforesaid circumstances, this Court granted bail to other 2 accused. The case of the present

applicant can not be treated in different way.

9. Learned counsel for the applicant placed reliance on some cases reported as 2015 (3)f Bom. C.R. (Cri.) - 704 [Mujahid Ibrahim Pathan & Ors. Vs. State of Maharashtra & Ors.], 2014 (4) Bom. C.R. (Cri.) - 836 [Narendra Singh @ Dallu Sardar Nanaksingh Digwa Vs. State of Maharashtra], 2011 (3) Bom. C.R. (Cri.) - 790 [State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya & Anr.], 2013 AIR (SC) – 158 [State of Maharashtra Vs. Vishwanath Maranna Shetty] and Judgment of the Division Bench of the Supreme Court in Criminal Appeal No. 1261 of 2009 decided on 29/05/2015.

10. The facts and circumstances of each and every case are different. In view of that, this Court holds that it is not desirable to keep the present applicant behind the bars.

11. In view of the above, the application needs to be allowed. Hence, the following order.

[i] The application is allowed.

[ii] Applicant Habib Khaled Habib Mohammad be released on P.R. and S.B. of Rs. 1 Lakh [Rupees One Lakh].

[iii] He is not to tamper the prosecution witnesses. He is not to leave Aurangabad district without the permission of the concerned Court.

- [iv] Before releasing the applicant on bail, his papers viz. pass-port and other papers on the basis of which he can leave the country be seized and only after seizure of the aforesaid documents, he is to be released on bail.
- [v] Learned Additional Sessions Judge is to first see that this condition like taking over of the documents is satisfied and thereafter only the applicant be released on bail.
- [vi] Bail be furnished in the Court of the Additional Sessions Judge, where the case against present applicant is pending.

[T.V.NALAWADE, J.]