

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

925 CRIMINAL APPLICATION NO. 5320 OF 2016

FARID FEROZ KHAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Syed Zahed Ali
APP for Respondent : A.P. Basarkar
...

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2016.

ORDER :

1. The application is filed for bail in C.R. No. 21/2012 registered in Begumpura Police Station, District Aurangabad for the offences punishable under sections 302, 201, 120(B) etc. of Indian Penal Code and section 3(1)(i), 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act 1999 ('MCOC' Act for short) and few sections of Bombay Police Act. Both the sides are heard.

2. This is the fourth application filed for bail by the present applicant. It appears that Criminal Application No. 4700/2013 was decided by this Court on merits after hearing both the sides and some record of investigation was considered by this Court. The learned counsel for applicant submitted that the record which was shown by the counsel of the applicant was

not of C.R. No. 21/2012, but it was of C.R. No. 19/2012. He submitted that present applicant is already granted bail in C.R. Nos. 19/2012, 32/2012 under section 167 (2) of Criminal Procedure Code. The learned APP has no information with regard to C.R. No. 32/2012 and he submitted that there is possibility that no bail is granted to the applicant in C.R. No. 32/2012. In that case, the applicant will not come out of the jail even if he is granted bail in the present application.

3. There are allegations against the present applicant that he is the member of gang created by Imram Mehendi and this gang was accepting job of hire killing. In the present matter, there is allegation that one Police Constable Gajanan Mhatre had engaged this gang for murder of his wife and for monetary consideration, this gang committed murder of wife of Gajanan Mhatre. Gajanan Mhatre is accused in this matter. The learned counsel for applicant submitted that in the present matter, said Gajanan Mhatre is granted bail under section 167 (2) of Criminal Procedure Code. In any case, in view of the provision of section 21 (4) of the aforesaid Special Act, the Court is expected to consider the material and then the Court is expected to decide as to whether the provision can be used as bar for granting bail. In the previous matter, this Court was shown some record from

other matter, but that was in respect of other offences. In the present matter, it was submitted that there is virtually no evidence against the present applicant to connect him with the murder of wife of Gajanan Mhatre. It appears that police have collected some material from other accused which consist of recovery under section 27 of the Evidence Act. There could have been possibility of taking the name of applicant by other accused even under section 27 of the Evidence Act. But, there is no such record. No statement of accused which could have been recorded under the aforesaid Special Legislation is there against the present applicant. There is allegation that he was a member of gang of Imram Mehendi and so, he had participated in the said offences also.

4. As there is no material at all as against the present applicant to connect the present applicant with the murder of wife of Gajanan Mhatre, this Court holds that the bar of provision of section 21(4) of the Special Act cannot be used against him. Similarly, it is not the case of prosecution that when he was on bail, offence was committed and there is no bar of section 21(5) of the Special Legislation. In view of these circumstances, this Court holds that it is not desirable to keep the applicant behind bars for further period. Inquiry was made

and it was submitted that the case has not made progress and without making any progress, present applicant is languishing in jail. This Court has granted bail to some persons of this Mehendi gang on furnishing solvent surety of Rs. One lakh and so, the following order.

ORDER

- I) The application is allowed.
- II) The applicant is to be released on bail on his furnishing P.R. of Rs.1,00,000/- (Rupees one lakh) with one or more solvent sureties to make the total amount as Rs.1,00,000/-. He is not to leave Aurangabad District without prior permission of Sessions Court. He is not to tamper with the prosecution witnesses. He is not to commit similar offences. He is not to leave India during pendency of the case filed against him. He is to attend the concerned police station on every 2nd Saturday of every month between 10-00 a.m. and 12-00 noon.

Authenticated copy is allowed.

[T.V. NALAWADE, J.]

ssc/