

Mr. Aniket U. Nikam with Mr. Aashish Satpute for the Applicant.
Mr. D.P. Adsule, APP for the Respondent- State.

DATE : 22ND FEBRUARY, 2016.

This is an application for bail filed by the aforesaid Applicant, who was arrested in Crime No.66 of 2015 registered at Khadak Police Station, District-Pune, for offences punishable under sections 120-B, 307, 143, 144, 147, 148 and 149 of the IPC and under sections 3/25(1)B, 5 /27 (1), 4/25 of the Arms Act and under sections 37(1) (3) r/w. section 135 of the Bombay Police Act and sections 3(1) (ii), 3(2) and 3(4) of the M.C.O.C.Act.

2. The allegations against the Applicant in brief are that the Applicant alongwith other co-accused on 11.3.2015 formed an unlawful assembly armed with deadly weapons such as fire arms, sickles, etc. and entered into a conspiracy to cause death of Ajay

Shinde. It is alleged that one of the co-accused tried to fire a gun shot at said Ajay Shinde. However, it hit against his girl friend Meghana. Said Meghana had sustained grievous injury and was admitted in the Jahangir Hospital for further treatment.

3. Mr. Aniket Nikam, the learned counsel for the Applicant has submitted that though the first informant had named the Applicant as one of the persons involved in the incident. He had not identified him in the ID parade and had not named in the supplementary statement recorded after ID parade. He further submits that the victim as well as the other eye witnesses have not identified the Applicant herein. He has further submitted that there is no recovery at the instance of the Applicant and furthermore, the only confession statement relied upon by the prosecution was retracted and the same cannot be relied upon. In this regard he has placed reliance on the decision of the Apex Court in **Jameel Ahmed and Anr. Vs. State of Rajasthan, 2003 SCC (Cri) 1853** and this Court in **Yasir Sayyed Anis Sayyed @ Hujefa Vs. State of Maharashtra.**

4. The learned counsel for the Applicant therefore, contends that there is no prima facie material to show the involvement of the Applicant in committing the said crime. Hence, the Applicant is

entitled for bail.

5. The learned APP submits that the confessional statement of the co-accused prima facie shows involvement of the Applicant in the said crime. He has submitted that the co-accused had retracted from the confession is not a ground to presume that the confession is tainted. He has relied upon the decisions of the Apex Court in **State of T.N. Vs. Kutty alias Lakshmi Narasimhan (2001) 6 Supreme Court Cases 550** and **Mohd Farooq Abdul Gafur and Anr. Vs. The State of Maharashtra (2011) 3 SCC (Cri) 867**. The learned APP has stated that the conviction under MCOC can be based solely on the confessional statement of the co-accused.

6. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State. The FIR lodged by Ajay Shinde prima facie reveals that on 11.3.2015 at 4.30 p.m. he and his girlfriend-Meghna were proceeding towards the house of Meghna. They had parked the vehicle near Himmatlal Jewellers show room and as they were crossing the road, he turned back and saw that the Applicant and other co-accused were walking towards them. He has stated that one Appa was carrying a fire arm whereas the Applicant herein and the other co-

accused were holding sickles in their hand and were following them. Apprehending that they would be assaulted, he and Meghna tried to rush towards Meghna's house. The FIR states that Appa fired a gun shot, which hit Meghna and she sustained injury. The complainant had stated that the brother of Meghna who was present at the place of the incident, shifted Meghna to Naik hospital and thereafter to Jahangir Hospital for further treatment.

7. It is to be noted that the ID parade was held on 8.5.2015 wherein the complainant Ajay Shinde was asked to identify Navnath and Nagesh, the Applicant herein. This fact prima facie indicates that though this Applicant was named in the FIR there was some doubt about his identity. This is further fortified from the fact that the complainant was unable to identify the Applicant herein in the ID parade held on 8.5.2015.

8. It is also to be noted that the first informant had stated that in the FIR dated 11.3.2015 that Appa Banekar fired a gun shot at Meghna. Whereas in his supplementary statement he had clarified that Appa was not armed with a revolver but armed with sickle. He had claimed that gun shot was fired by Tejas Deere. The said supplementary statement was recorded immediately after the ID

parade.

9. The victim as well as the other eye witnesses have also not named the Applicant in their statements under section 161 of the Criminal Procedure Code neither identified the Applicant in the ID parade held by the executive Magistrate. Though the Applicant was arrested on 11.3.2015 no recovery has been made at his instance. It is to be noted that the prosecution has relied mainly on the confession statements of the co-accused Navnath Suresh Lodha, Yogesh @ Appa Vijay Banekar, and Tejas Amrut Deere.

10. In Mohd. Farooq Abdul Gafur (supra) the Apex court has reiterated that conviction could be based solely on the basis of the confessional statement itself and such conclusion is also permissible on the basis of the confessional statement of the co-accused which could be used and relied upon for the purpose of conviction. It is thus, well settled that the confessional statement of the co-accused can be relied upon to prove the charge under MCOC Act.

11. In Jameel Ahmed (supra) the Apex Court has reiterated that :-

“In regard to the use of such confession as against a co-accused, it has to be held that as a matter of

caution, a general corroboration should be sought for but in cases where the court is satisfied that the probative value of such confession is such that it does not require corroboration then it may base a conviction on the basis of such confession of the co-accused without corroboration. But this is an exception to the general rule of requiring corroboration when such confession is to be used against a co-accused.”

12. Nonetheless the confessional statements of the co-accused Navnath Lodha and Yogesh@ Appa Vijay Banekar prima facie indicates that they had entered into a conspiracy to eliminate Ajay Shinde. Their confessional statements recorded under section 189 of the Cr.P.C.prima facie indicate that the Applicant, who was armed with a sickle had accompanied them to the place of the incident. Whereas the confessional statement of Tejas Deere does not indicate that the Applicant herein had accompanied him or the other co accused or that he was present at the place of the incident.

13. In State of T.N. (supra) the Apex Court has observed that it would be injudicious to jettison a judicial confession on the mere presence that its maker has retracted from it. The Court has a duty to evaluate the evidence concerning the confession by looking at all

aspects. The twin test of a confession is to ascertain whether it was voluntary and true.

14. Reverting to the facts of the present case, the confessional statements of the co-accused Navnath Lodha, Yogesh @ Appa Bankar, Tejas Deera were recorded under section 18 of the MCOC Act. These confessions were retracted by the co-accused. The question of retraction and the voluntary and the truthful nature of the confession cannot and need not be going at this stage. Disputed identity of the Applicant, the retraction of the confession, coupled with the inconsistency and lack of corroborative material, would prima facie not justify further detention of the Applicant.

15. Under the circumstances, and in view of discussion supra the application is allowed on the following terms and conditions:-

- (i) The Applicant be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties to the like amount to the satisfaction of Special Court, Pune.
- (ii) The Applicant shall not interfere with the complainant, victim or any other witnesses in any manner.
- (iii) The Applicant shall not enter the jurisdiction of Khadak

police station wherein the complainant and the victim is residing till the evidence of the complainant and the victim is recorded.

(ANUJA PRABHUDESSAI, J.)