

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL BAIL APPLICATION NO. 1202 OF 2016

Tejas Amrut Dire

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Jaydeep Mane Advocate for Applicant.

Mr. S. S. Pednekar APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATED : AUGUST 23, 2016.**

**PC :**

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 14/06/2015 in crime no. registered75 at Khadak police station for offence punishable under sections 307, 120 (B), 143, 144, 147, 148, 149 of the Indian Penal Code and Section 3/25 (1-B), 5/27 (1) of the Indian Arms Act. Applicant has also been charge-sheeted under Sections 3 (1) (3) r/w 135 of the Bombay Police Act

2) It is the case of the prosecution that on 11/03/2015 one Ajay Shinde lodged a report at the police station alleging therein that on 11/03/2015, he was in the company of his girlfriend namely Meghana. They had gone for drive in Scorpio jeep. They had been to East Street Camp, Pune for shopping.

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They had visited the State of Bank of India for withdrawal of the amount, however, it was a bank holiday and therefore, they decided to proceed towards the house of Meghana i.e. Kasture Chowk. He had parked his Scorpio in front of Himmatlal Jewellers and suddenly he realized that some known persons along with other unknown persons had rushed towards them with a revolver and other weapons. It is the case of the complainant that complainant and his girlfriend Meghana apprehended danger and therefore, rushed towards the house of Meghana. A bullet was shot and Meghana sustained injury on her stomach, just below her chest. She was rushed to the hospital.

3) The learned counsel for the Applicant submits that in fact, the name of the Applicant is not mentioned in the F.I.R. It is also submitted that this could be a case of mistaken identity, since initially the complainant had stated that a bullet was shot from the revolver of Appa. Subsequently, after the arrest of the present Applicant, the complainant had identified the Applicant in the test identification parade and had corrected himself that blankly he presumed it was Appa, but, in fact it was the present Applicant. He had identified the Applicant in the test identification parade.

4) It is pertinent to note that in the test identification parade , Meghana

had also identified the present Applicant as the person who had shot at her. In the course of investigation, the name of the present Applicant had surfaced. Hence, Applicant was arrested.

5) The learned counsel for the Applicant submits that the Applicant is prosecuting his education in engineering faculty. That several offences registered against him are trifling in nature and therefore, that cannot be considered as criminal antecedents. The learned counsel for the Applicant further submits that the Applicant has been falsely implicated by the Complainant. The learned counsel further submits that the co-accused namely Nagesh @ Sonya Gangawane was named in the F.I.R., however, he has been enlarged on bail, by this Court (Coram: Smt. Anuja Prabhudessai, J.) vide order dated 22/02/2016 and therefore, by virtue of doctrine of parity, Applicant also deserves to be enlarged on bail. More particularly, because he has been arrested almost 3 months after the alleged incident.

6) Perused the order dated 22/02/2016. The Hon'ble predecessor Bench has specifically observed that the accused Nagesh Gangawane was not identified by the complainant in the test identification parade held by the Executive Magistrate, though he was arrested on 11/03/2015. In the present

case, applicant has been identified by the complainant as well as injured Meghana as the person who had shot at her at the time of incident.

7) The learned APP submits that the prosecution also relied upon the confessional statement of the present Applicant in which he has given the entire history. He has specifically stated in his confessional statement that he belongs to the gang of Navnath Lodha. The said contention is also corroborated by the confessional statement of Navnath Lodha and other co-accused. He has also given the *modus operandi* in which the alleged incident has occurred. Applicant has made inculpatory statements in the confessional statement recorded on 14/07/2015. There are criminal antecedents against the applicant. He has also admitted that Appa Banekar had given him money to purchase a pistol to eliminate Ajay Shinde.

8) The learned APP rightly submits that Applicant is being prosecuted under the provisions of MCOC Act. That the confessional statement needs to be taken into consideration and a presumption is mandatory under Section 22 of the MCOC Act. The learned APP Has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **State of Maharashtra V/s. Vishwanath Maranna Shetty [AIR 2013 SUPREME COURT 158]** in

which the Hon'ble Apex Court has observed as follows:

*“The analysis of the relevant provisions of the MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions show that substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied. Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin tests as mentioned above while granting bail”.*

9) At this stage, the learned counsel for the Applicant submits that unless and until there is cogent and convincing material against the applicant, no such presumption can be drawn. The presumption is to be drawn on the basis of the material collected by the investigating agency during the course of investigation. The confessional statement of the accused is also to be considered as a incriminating material and a presumption is to be drawn on the basis of confessional statement. Moreover, on the basis of material collected in the course of investigation, it would not be possible for this Court to record a finding or a subjective satisfaction that Applicant may not indulge into similar activities, in the eventuality of being enlarged on bail.

10) The learned counsel for the Applicant submits that he is being instructed by the father of the present Applicant. He further submits that

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Applicant is a student, studying engineering course, however, no such certificate is placed on record. The learned counsel for the Applicant submits that since the parents of the Applicant are illiterate, they could not produce the said certificates. The confessional statement indicates that his father is residing at Yerawada and that he has abandoned the mother of the Applicant. The address of the present Applicant is shown as Mundwa Pune and native village is Pohor, Tal: Pandharpur, Dist. Solapur. It is therefore, appropriate that the father of the present Applicant has expressed his inability to produce the college certificate.

11) The confessional statement does not even remotely indicate that he was studying engineering at the time when he was arrested in the present case. The liberty of an individual has to be weighed as against the safety and security of the society.

12) In view of the discussion made herein above, the Applicant does not deserve to be enlarged on bail.

13) Application, being sans merits, stands rejected.

**(SMT. SADHANA S. JADHAV, J.)**