

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1445 OF 2016

Kalim Akram Ansari and others

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Rahul Thakur Advocate for Applicants.

Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 22nd NOVEMBER, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant nos. 1 & 2 are arrested on 26/06/2015 and applicant nos. 3 & 4 are arrested on 28/06/2015 in crime no. 197 of 2015 for offence punishable under sections 327, 326, 323, 143, 144, 147, 145, 120 (B) and 506 r/w 34 of the Indian Penal Code and also under section 3 (1) (2), 3 (2), 3 (4) of the Maharashtra Control of Organized Crime Act, 1999 (Hereinafter referred as 'MCOC').

2) At the outset, the learned counsel for the applicants rightly submits that

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applicants do not have any criminal antecedents. It is also submitted that taking into consideration the injury certificate, it would be apparent that the offence would be under section 324 or 326 of the Indian Penal Code and that the applicants are in custody for almost 18 months.

3) The learned APP submits that the principal accused Sabale brothers are absconding and they are the leaders of the organization. As far as the role of the present applicants is concerned, it is submitted that applicant no. 1 is employed as driver of the principal accused Sabale. Applicant no. 2 is the brother of applicant no. 1 and applicant nos. 3 & 4 are local tribals residing in the same area.

4) Upon perusal of injury certificates, it appears that the complainant had sustained fracture of tibia and was admitted in the hospital. That he had sustained fractures on his tibia fibula. He was admitted in the hospital on 23/06/2015.

5) Apart from the fact that there is evidence to show that applicant no. 1 is employed by the principal accused and that in all probabilities the principal accused had availed the services of the other three applicants to assault the complainant and wreck his vengeance, there is no material against the present

applicants, but in view of the fact that they are being prosecuted under the provisions of MCOC Act, it is not possible for this Court to record a finding and subjective satisfaction that in the eventuality that they are enlarged on bail, they may not commit similar offence. After hearing the learned APP, it is also not possible to record a finding that the applicants are not in any way connected with the present offence.

6) In view of this, application is being rejected mainly on the ground that there are fetters on the powers of this Court to enlarge the accused being prosecuted under MCOC Act.

7) It is submitted by the learned APP that only the present applicants are in custody and principal accused are absconding. Hence, the learned Sessions Judge is hereby requested to separate the trial of the principal accused and proceed with the trial of the present applicants with a rider that evidence recorded in this case may be read in evidence against the absconding accused also.

8) Taking into consideration the evidence against the present applicants, the learned Special Judge shall make every endeavour to conclude the recording of the evidence against the present applicants within one year from

the date of framing of charge.

9) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)