

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

CRIMINAL APPLICATION NO. 193 OF 2017

Shaikh Shoaib s/o Shaikh Riyaz,
Age 22 years, Occu.Labour
R/o Baijipura, Galli no.23,
Aurangabad

.. Applicant

Versus

State of Maharashtra through
Jinsi Police Station, Aurangabad

.. Respondent

Mr R.M. Shaikh, Advocate for applicant
Mr V.S. Badakh, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th February 2017

PER COURT

Heard.

2. The applicant is seeking regular bail In C.R. No.230/2016, registered at Jinsi Police Station, Aurangabad, for the offences punishable under Sections 302, 143, 144, 147, 148, 149 of the Indian Penal Code, under Sections 4 and 25 of the Arms Act and under Sections 3 (1) (i), 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as "M.C.O.C. Act" for brevity).

3. It is the case of the prosecution that the present applicant along with other co-accused assaulted one Shaikh Rafiq Shaikh Khaja on 5th June 2016 and has caused stab injuries resulting into his death, as such came to be arrested.

4. The provisions of M.C.O.C. Act are invoked against the present applicant on the ground that the applicant is a member of syndicate and against the said member of the syndicate, there are more than one charge-sheet filed in last ten years period.

5. While trying to make out the case for grant of regular bail, learned Counsel for the applicant submits that the investigation in the matter is complete and charge-sheet is filed. He would submit that the other co-accused are already released on default bail, whereas the present applicant is claiming regular bail on merit. According to him, even if it is presumed that the applicant is involved in the crime in question, still the fact remains that the role attributed to the applicant in the crime in question is that of assaulting by fists blows or caught holding of the leg of the deceased Shaikh Rafik Shaikh Khaja, so as to assist the other accused persons to stab him. According to him, he is not involved in the offence, for which first information report was lodged on 5th June 2016, however, there is improvement that the applicant is one of the accused, which is after thought. According to him, the applicant is falsely implicated.

6. Learned Addl. Public Prosecutor opposed the application on the ground that the applicant cannot claim parity with other co-accused, who are released on default bail, for non-filing of charge-sheet within the stipulated period. He would then urge that the offence in which the present applicant is charged, is serious one punishable with death or life imprisonment. He would rely upon the confessional statement of the co-accused recorded under Section 18 of the M.C.O.C. Act.

7. Considering the rival submissions of the parties, it is required to be noted that the first information report came to be lodged on 5th June 2016 and in the said report, the present applicant is not attributed any role, much less his physical presence on the spot of the incident. On the second day, i.e. on 6th June 2016, supplementary statement of the complainant was recorded who was closely related to the victim and he has named the present applicant of having actively participated in the crime in question. Haseena, wife of Shaikh Rafiq has named present applicant, as caught holding the deceased, so as to facilitate the assault with knife by co-accused, which injury perhaps appears to be the cause of death. So far as the presence of Haseena is concerned, same was not recorded in the complaint, which was lodged on 5th June 2016 and it is on 6th June 2016, there appears to be substantial improvement.

8. Apart from above, the recovery under Section 27 of the Evidence Act from the present applicant is that of his clothes, which he worn on the day of commission of crime. The clothes of the applicant did not carry any blood stains, as is appearing from the papers, which is part of charge-sheet. Admittedly, there is only one crime against the present applicant, i.e. present one in which he is seeking regular bail. The crime in question even if presumed to have been committed by present applicant, does not involved any monetary gain. Apart from above, though reliance is placed on confessional statement of co-accused Shaikh Irshad, who is already released on default bail, the role attributed to the present applicant is that of assaulting the deceased with fists blows.

9. From the factual matrix, as has been discussed herein above in the backdrop of evidence placed on record, there is serious doubt as regards prima facie involvement of the applicant in crime in question. As such, the applicant deserves to be released on bail.

10. The applicant be released on bail in C.R. No.230/2016, registered at Jinsi Police Station, Aurangabad, for the offences punishable under Sections 302, 143, 144, 147, 148, 149 of the Indian Penal Code, under Sections 4 and 25 of the Arms Act and under Sections 3 (1) (i), 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organized Crimes Act, 1999, upon executing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.

11. The applicant shall keep himself away from the jurisdiction of Jinsi Police Station, Aurangabad till conclusion of trial.

12. Two consecutive absence of the applicant before the Court below during the trial will entail the trial Court to take out the proceedings for cancellation of bail, if so desired.

13. If it is noticed that the applicant is involved in any other crime, after his release, it will be open for the prosecution to move for cancellation of bail.

14. The applicant shall not influence the prosecution witnesses and shall not tamper with the prosecution evidence.

15. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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