

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 526 of 2016

Sushant Yashwant Kaap

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prashant Gurav for the applicant.

Smt. J. S. Lohokare, APP for the respondent-State.

PSI S. B. Raskar, Antop Hill Police Station present.

CORAM : PRAKASH D. NAIK, J.

DATE : 29 JUNE 2017

P.C. :

1. This is an application for regular bail. The applicant is arrested in connection with C.R. No.65 of 2014 registered with Antop Hill Police Station, Mumbai for the offences punishable under sections 143, 144, 145, 147, 148, 149, 307, 387 of IPC. The applicant was arrested on 28 March, 2014. Subsequently, the provisions of MCOC Act under sections 3(1)(ii), 3(2), 3(4) of the said Act were applied.

2. The prosecution case is that on 13 March, 2014 at about 1.30 pm the informant Imtihaz Maqbool came to Antop Hill area in search of work. At about 7.45 pm while he was proceeding from Shiva ka

Darga accused no.1 gave a dash to him with his motorcycle. There was quarrel between both of them. Accused no.1 assaulted the informant. It is alleged that on earlier occasions accused no.1 extracted Rs.500/- from the informant. It is alleged that accused no.1 to 8 chased the informant and assaulted him with sharp edged weapon. Hence the FIR was lodged.

3. At the instance of the applicant, counter FIR was registered against the rival group including the first informant for the offence punishable under section 307 of IPC.

4. The investigation was conducted in both the cases and the chargesheets were filed. Subsequently, the provisions of MCOC Act were applied in both the cases.

5. The accused in the aforesaid cases applied for discharge before the MCOC Court and the provisions of MCOC were dropped.

6. The order which is passed in connection with rival groups was challenged before the High Court and appeal preferred by the State has been dismissed. Learned APP had stated that order of discharge passed in favour of the accused in the present case by the Special Court is also under challenge by way of appeal which is pending

before this Court. Learned advocate for the applicant submitted that the said appeal has been pending since 4th August, 2016. The order of discharge was passed by the Special Court for MCOC Cases in July, 2015.

7. Perused the FIR and other documents annexed to the chargesheet. In the FIR the name of the applicant has not been referred to.

8. The complainant has alleged that the persons who are named and the other associates had assaulted the complainant which had resulted into injuries. However, subsequently statement of the complainant was recorded on the next day, in that statement overt act is attributed to the applicant as one of the assailant who has used the weapon and assaulted him. It is further submitted that the injury certificate of the complainant depicts the simple injuries and the same does not corroborate the version of the complainant. He further submitted that admittedly provisions of MCOC Act have been dropped against the applicant and he is in custody since 28 March, 2014. The trial has not commenced.

9. Learned APP opposed the application for bail. She referred to

supplementary statement of the complainant wherein the overt act has been attributed to the applicant as one of the assailant.

10. Considering the fact that the provisions of MCOC are dropped and also considering that the first informant has not referred to the name of the applicant in the FIR, the case for bail is made out. The applicant / accused is known to the complainant, it was expected that his name ought to have been reflected in the FIR. On perusal of the medical certificate, it appear that the injured had sustained simple injuries. The order discharging the rival group was challenged before this Court by way of an appeal. The Division Bench of this Court has dismissed the said appeal merely on the ground that the order of discharge qua the applicant and other accused in the present case is being challenged before this Court and that the appeal is pending before this Court since August, 2016, is no ground to refuse bail to applicant.

11. Hence, I pass the following order;

:: ORDER ::

- (i) The applicant is directed to be released on bail in connection with C.R. No.65 of 2014 registered with Antop Hill Police

Station, Mumbai on furnishing P.R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only.) with one or more sureties in the like amount.

- (ii) The applicant is directed to report to Antop Hill Police Station, Mumbai once in a month on the first Saturday of every month between 11.00 to 1.00 till the trial is over.
- (iii) The applicant should furnish the details of his residential address to the investigating officer.
- (iv) Application stands disposed of.

[PRAKASH D. NAIK, J.]