

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

BAIL APPLICATION NO. 1116 OF 2016

Irfan Maulana Sayyed	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

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Mr.Aniket Vagal, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
PSI Jadhav, Santacruz Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 17, 2017.

P.C. :

This is an application for bail in MCOC Special Case No.4 of 2014. The applicant was arrested in connection with C.R.No.175 of 2014 registered with Santacruz Police Station, Mumbai for the offence punishable under Section 307 of IPC. Subsequently, the provisions of MCOC Act were applied by invoking Section 3(1)(ii), 3(2), and 3(4) of MCOC Act, 1999.

2 Prosecution case is that there was animosity between the main accused Zulfikar and Usuf Pathan who is the builder. On 1st March, 2014 there was an incident of vandalizing the office

premises of the builder Yusuf Pathan. The complaint in that regard was lodged by the security guard. Several persons were arrested in this case. It is the prosecution case that Zulfikar is the history-sheeter and there are several cases pending against him. It is alleged that as a crime syndicate, all the accused had committed the aforesaid act. No one was injured, offence under Section 307 was applied in this case. The learned advocate for the applicant submitted that there is no evidence to invoke the charge under the provisions of MCOC Act. The applicant is not the member of the crime syndicate of the main accused. There is no evidence/material that at earlier point of time the applicant is involved in commission of any crime with the alleged main accused Zulfikar. It is further submitted that the accused were attributed identical role in the present case has been granted bail by this Court and on parity, the applicant is entitled for bail.

3 He pointed out the order passed by this Court in Criminal Bail Application No.349 of 2015 and the orders passed in the Criminal Bail Application Nos.2717 of 2014 and 1465 of 2015.

4 He further submitted that the applicant has been

assigned similar role which was attributed to the person who was granted bail.

5 Learned APP, opposed the application for bail. It is submitted that the applicant is the member of crime syndicate. It is submitted that the applicant is involved in vandalizing the office premises of Yusuf Pathan who was directed to do so by the main accused. It is stated that the applicant has been identified as the person at the scene of offence as also the person has been captured in the C.C.T.V. camera. It is further submitted that there were calls *inter-say* between the accused who was involved in this crime. It is further submitted that one more case is registered against the applicant under Section 353 of IPC. The said case was registered against the applicant when the applicant and other accused were produced in the Court and there was some scuffle between the police and the family members of the applicant. The applicant and his parents are implicated as accused in the said case.

6 Learned APP submitted that considering the evidence against the applicant, bail should not be granted to him.

7 I have perused the documents on record. There is no injury caused to any person although Section 307 has been invoked in the present case. This Court while granting bail to three persons vide Bail Application No.349 of 2015 has observed that *prima facie* there is nothing on record to indicate that the said applicant had participated in any continuing unlawful activities with the principal accused i.e. Zulfikar prior to the present incident and, therefore, they are entitled to be released on bail. In the said application it was argued by the prosecution that charge-sheet would show that the principal accused was in jail and he was in contact with the said applicant and, therefore, they are members of crime syndicate of Zulfikar. The Court also considered the decision of this Court in the case of ***Govind Sakharam Ubhe Vs. State of Maharashtra***¹ as well as the judgment passed in Criminal Appeal No.25 of 2014. The said applicants were therefore granted bail. As far as the present applicant is concerned, there are no other cases involving the applicant with the principal accused Zulfikar. It is submitted that there are no telephonic calls between the applicant and Zulfikar although there appears to be calls from other accused. This Court has also granted bail to the other accused wherein there were

1 2009 All MR (Cri.) 1903

antecedents against them. Reference is made to order of this Court in Criminal Bail Application Nos.2717 of 2014 and 501 of 2015. The allegation against the applicant in B.A.501 of 2015 was that he was in contact with Zulfikar, the principal accused, who was in jail, on his cell phone. The said accused was granted bail vide order dated 20th July, 2015. I have also perused the order dated 9th May, 2016 passed by this Court in Bail Application Nos.1465 of 2015 and other applicants. It is observed that amongst three accused, two accused there were antecedents against them, however, they were granted bail. Learned APP had also submitted that the brother of Zulfikar was released on parole and he has committed murder of one of the witness in the present case. It is, therefore, submitted that there is likelihood of tampering the witnesses.

8 The submissions which were advanced by learned APP that one of the witness is being murdered by the brother of the main accused cannot be accepted for rejecting bail to applicant since the applicant is not shown to be involved in the said crime. The applicant is in custody from 4th March, 2014. Considering the aforesaid circumstances, this application deserves to be allowed.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.1116 of 2016 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.175 of 2014, registered with Santacruz Police Station, Mumbai on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount;
- (iii) The applicant is directed to report Santacruz Police Station, Mumbai on first Sunday of every month between 11.00 a.m. to 1.00 p.m. till the conclusion of the trial;
- (iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)