

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

**CRIMINAL BAIL APPLICATION NO.1878 OF 2015**

Mohammed Zakir Abdul  
Haque Shaikh

.. Applicant

**Vs.**

The State of Maharashtra

.. Respondent

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Dr.Yug M. Choudhary a/w. Ms.Naima Shaikh, Parijata, Payoshi  
Roy i/b. Mr.Khan Waheb, Advocate for the Applicants.

Mr.R.M. Pethe, APP for the Respondent – State.

Mr.Raja Thakare, Spl. P.P. for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : JULY 1, 2017.**

**P.C. :**

This is an application for bail, pertaining to C.R.No.152 of 2008 registered with DCBCID, Mumbai. The applicant-original accused no.4 is facing charges under Section 295-A, 505(2), 506(II), 120-B, 121, 122 and 286 of IPC read with Sections 4 and 5 of the Explosive Substance Act and Section 6, 9(B) of Explosive Act, 1884 read with Sections 3 and 25 of the Arms Act. The applicant is also facing charges under Section 13(1)(a)(b), 16, 18, 19 and 20 of the Unlawful Activities

(Prevention) Act, 1967 read with Section 67 of the Information Technology Act, 2000 as well as Sections 3(I)(ii), 3(2), 3(4) of MCOC Act, 1999. The applicant was arrested on 24<sup>th</sup> September, 2008. The prosecution case is that on 26<sup>th</sup> July, 2008 serial blasts took place at various places in Ahmedabad and Surat. Complaints lodged with various police stations. On 23<sup>rd</sup> August, 2008, an EME was sent to India T.V. News channel allegedly by Indian Mujahidden organization, taking responsibility of events of 26<sup>th</sup> July, 2008 and also containing threats allegedly given to ATS officers Mumbai and Gujarat Police. On 13<sup>th</sup> September, 2009 another EML was sent to electronic media allegedly by Indian Mujahideen, claiming responsibility of the lasts. He was produced before MCOC Special Court and remanded to custody. On 5<sup>th</sup> November, 2008, the applicant was also made an accused in blast cases of Gujarat. The present case was numbered as MCOC Special Case No.4 of 2009.

2           The charge was framed against the applicant-accused by the Special Court constituted under the MCOC Act. However, trial has not commenced. The applicant had preferred an application for discharge which was rejected on 26<sup>th</sup> May, 2010 by Special Judge for MCOC. The applicant challenged the said order

by preferring criminal appeal no.498 of 2010 before this Court. The said appeal was dismissed on 13<sup>th</sup> August, 2010.

3           The applicant preferred an application for bail before the Special Court for MCOC cases. The said application was rejected on 6<sup>th</sup> September, 2013.

4           Learned advocate for the applicant submitted that the applicant has been in custody since last eight and half years. The trial has not yet commenced and that there is no indication as to when the trial would commence. It is submitted that the present case only relates to the sending of E-Mail. The applicant is facing charges for the other offences in relation to which the proceedings are pending in the State of Gujarat. It is submitted that except issue of sending E-mail, no other issues are involved in the present case. He submitted that there is no direct evidence to connect the applicant with the alleged E-mail. He relied upon the order passed by this Court granting bail to the co-accused wherein it was observed that the present case is only concerning the alleged E-mail and in the light of the fact that there was no evidence connecting the said accused to the E-mail, they were granted bail. Applicant, therefore, claims parity as there is no

evidence against applicant connecting him with the said E-mail. It is submitted that the applicant is languishing in jail as aforesaid since 2008 and there is no necessity of further detention of the applicant. Learned advocate also pointed out the observations of the Special Court while rejecting the bail to the applicant. He submitted that from the said observations it is apparent that no role was assigned to the applicant *visa-vis* the E-mail which was sent claiming responsibility for the incidents of bomb blasts which had occurred in the State of Gujarat. In paragraph 11 of the order it is stated that confessional statements would *prima facie* show that the applicant is not directly involved in sending threatening E-mail under question but then he is involved in various unlawful activities undertaken by the organisation. The learned counsel pointed out observations of this Court in Criminal Bail Application No.1047 of 2011. In paragraph 7 of the order dated 24<sup>th</sup> September, 2012, it is observed that it is not in dispute that the present case not in respect of the bomb blast that took place in Ahmedabad and Surat or in respect of theft of cars used for planting bombs. The case basically arises out of threatening EML. It was also submitted that Indian Mujahideen was not a terrorist organisation as contemplated under UAP Act at the relevant time. Similar orders were also passed in respect to other

accused who were similarly placed. It is therefore submitted that applicant be released on bail.

5            Learned Special P.P. Mr.Thakare opposed the application for grant of bail. He submitted that the prosecution case relates to other acts and not simplicitor the E-mail as submitted by the learned advocate for the applicant. He submitted that the charge was framed against the applicant by the Special Court constituted under the MCOC Act which relates to various acts during the period from August 2006 to October 2008 within and outside India. In the charge, there is reference of waging war against the government, to overawe by means of force, Government of Maharashtra and India, to create instability by subversive activity, to organise training camps to carry on unlawful activities of organised crime syndicate singly or jointly either as a member of an organised crime syndicate or on behalf of such syndicate etc. He, therefore, submitted that the investigation was carried out with regard to the applicant and several other accused which constitute the offence under the MCOC Act as well as Unlawful Activities (Prevention) Act, 1967. He pointed out the observations of Division Bench of this Court which were made while deciding appeal preferred by applicant.

The applicant had preferred an application for discharge before the Special Court which was rejected on 26<sup>th</sup> May, 2010. The appeal as above was preferred before this Court viz. Appeal No.498 of 2016. The Court in the said order has observed that if the confessions of three accused are read together than the only *prima facie* inference can be drawn that the applicant has abetted the crime as envisaged under Section 2(1) (a)(i) of MCOC Act and he has also conspired to commit an offence as punishable under Section 3(2) of MCOC Act. He submitted that the learned Judge while granting bail to the co-accused has not considered the said observations as apparently the same were not brought to the notice of the Court. He further submitted that the applicants are in custody also in connection with the bomb blasts which had occurred in the State of Gujarat, trial of which is pending.

6            Learned Advocate for the applicants, however, submitted that any observations made while considering the application for discharge cannot be considered while dealing with bail application. This Court has granted bail to co-accused. He submitted that although there is no evidence connected with EML, the applicant is subjected to custody for eight and half years. He submitted that confessional statements in the present

case cannot be relied upon. He submitted that there is no indication as to when the trial would commence and will be concluded. He submitted that the MCOC Court had passed an order on 24<sup>th</sup> December, 2014, stating that the offence in MCOC Special Case is not triable by Special Court under MCOC Act but by Court of Sessions of the division, Greater Mumbai. The said order was challenged by State vide criminal Appeal No.56 of 2019 and by way of interim order the order passed by MCOC Court has been stayed. The said appeal is pending. Therefore, according to advocate for the applicant, there is no clarity about commencement of trial.

7           I have perused the documents on record and the orders passed by this Court in relation to grant of bail to the co-accused as well as the order passed by the Special Court rejecting the application for bail preferred by the applicants. The applicant is in custody in the present case as well as a case which is pending in the Court of Gujarat State in relation to the bomb blasts which had occurred therein. Applicant had preferred an application for bail in relation to the case pending in the State of Gujarat and the said application was rejected on the ground that the present case is pending against the applicants. The co-

accused who were granted bail were not involved in the case of bomb blasts, which is pending in the State of Gujarat. It is apparent that the learned Single Judge was not made aware of the order passed by the Division Bench wherein the observations were made that the evidence established that the applicant had abetted the commission of alleged offence. The order of division bench in appeal as stated above had not been challenged before higher Court. In the light of the embargo under Section 21(4) of the MCOC Act and considering the fact that charge was framed against the applicant and also considering the nature of allegations made against him, no case for bail is made out. Bail Application is, therefore, deserves to be rejected.

8                    Hence, I pass the following order:

**:: ORDER ::**

- (i)    Bail Application No.1878 of 2015 is rejected.

**(PRAKASH D. NAIK, J.)**