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

CRIMINAL BAIL APPLICATION NO.2033 OF 2016

Parvez Ahmed Sheikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Shirish Gupte, Senior Counsel a/w Mr.R.J.Rathod, Mr.Sohail Ahmed, Mr.Kamran Shaikh and Mr.Ali Bubere, for the Applicant.

Mr.S.S.Hulke, A.P.P for the Respondent-State.

API – Laxmikant Salunkhe, Property Cell, D.C.B, C.I.D, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th JULY, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.48 of 2015 registered with the D.C.B, C.I.D, Mumbai (initially registered with the Nagpada Police Station, Mumbai vide C.R.No.142 of 2015), for the alleged offences punishable

under Sections 387, 465, 471, 120B, 34 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act ('MCOC Act').

3. Learned Senior Counsel for the applicant submits that the allegations as against the applicant are false and baseless. He submitted that although the applicant is alleged to have made a confessional statement, the same is exculpatory in nature. He submits that the applicant, admittedly has no connection with Ravi Poojari, a gangster and that there is no material to show that the applicant was aware, that Tarique Shagir Siddiqui had any connection with Ravi Poojari. He submitted that the applicant does not have any previous cases with the said gang i.e. Ravi Poojari's gang, nor does he have any antecedents. He submitted that the applicant was only an employee of co-accused-Faizal Wadgama, who has been enlarged on bail under Section 167(2) of the Code of Criminal Procedure. He further submits that the applicant has not been named either in the FIR or in the supplementary statements, by the complainant. He submits that the applicant himself, had surrendered to the police on 4th May, 2015, when he learnt that he was shown as absconding in the charge-

sheet.

4. Learned APP opposed the application. Learned APP has filed an affidavit of Padmakar Chavan, Assistant Commissioner of Police, D-1 (Spl), presently attached to Detection Crime Branch, C.I.D., Mumbai. According to the learned APP, although the applicant has not been named in the FIR by the complainant – Zulfikar Ali Shaikh, the applicant's name cropped up in the course of investigation. He submitted that there are CDR records and transcripts of conversation, between Tarique and the applicant. He does not dispute the fact, that the applicant has no antecedents. Learned APP also relied on the applicant's confessional statement, recorded under Section 18 of the MCOC Act. According to the learned APP, the applicant's confessional statement recorded under Section 18 of the MCOC Act, shows the applicant's complicity and involvement in the crime. He submitted that the confessional statement of the applicant shows, that it was the applicant who introduced Faizal to Tarique; that the applicant travelled with Tarique to Mysore to meet Yusuf Suleman Kadri@ Yusuf Bachkana, who was lodged in the Mysore Jail; that later, the applicant again flew down to Mysore with Faizal and Tarique, to

meet Yusuf; that Faizal and Tarique met Yusuf in the Hospital etc.

5. Perused the papers. The complainant – Zulfikar Ali Shaikh, a resident of Nagpada area, is engaged in the business of manufacturing of footwear and also owns a hotel at Agripada. According to the complainant – Zulfikar, he is the owner of a commercial premises ad-measuring 8300 sq.mtrs, the value of which is about Rs.65 crores. The complainant has alleged that, on 18th February, 2015, Tarique Siddiqui and Faizal Wadgama, called him to meet them, at the Persian Darbar Restaurant, Byculla, Mumbai; that Faizal informed him, that he was redeveloping the Sutarwala Chawl and asked him to handover possession of the commercial premises and promised to adequately compensate him for the same. The complainant did not accede to the said offer. Thereafter, Tarique is alleged to have again approached the complainant with an offer, that he should take cash of Rs.4 crores or two flats, in lieu of the commercial premises. The said offer was also not accepted by the complainant.

6. On 28th February, 2015, the complainant's brother received a call from an international number +301. The caller disclosed his name as

Ravi Poojari and enquired about the complainant. The complainant's brother told Ravi Poojari, that he did not know anything about the complainant, pursuant to which, the caller disconnected the phone. After 10 minutes, when the complainant was in the hotel at the counter, he received an international call, again from the number +301. The complainant picked up the call and when the caller enquired about Zulfikar, the complainant falsely replied that he was not there, and therefore, the caller left a message saying, that the complainant should contact Ravi Poojari on his mobile phone, as he wanted to talk to him, about the Sutarwala property.

7. On 3rd March, 2015, Tarique called the complainant on his mobile and threatened him, and asked him to pay and close the matter. On 2nd April, 2015, when the complainant was in his hotel, he received a phone call on his landline. The person on the other side disclosed his name as Ravi Poojari and threatened and asked the complainant to handover the possession of the Sutarwala Chawl, by accepting an amount of Rs.4 crores from Faizal. Pursuant thereto, the complainant approached the Nagpada Police Station, and filed a complaint, which was registered vide

C.R.No.142 of 2015, alleging offences punishable under Section 387 r/w 34 of the Indian Penal Code. Considering the seriousness of the crime, the Joint Commissioner of Police (Crime) transferred the investigation of the said case, from Nagpada Police Station to the D.C.B., C.I.D., Mumbai, for further investigation, pursuant to which, the case was renumbered as C.R.No.48 of 2015. During investigation MCOC was applied to the aforesaid C.R. and after investigation, charge-sheet was filed as against the accused. The applicant was shown as an absconding accused in the charge sheet and hence, the applicant surrendered on 4th May, 2015, pursuant to which, he was arrested.

8. Admittedly, the present applicant has not been named in the FIR nor are there any statements nor any allegations of threats, extortion etc., as against the applicant. A perusal of the confessional statement of the applicant shows, that he was working with co-accused – Faizal since November, 2014. The same is not disputed by the prosecution. It also appears, that there was some dispute, with respect to the redevelopment of the property between the complainant- Zulfikar and Faizal. It also appears, from the applicant's confessional statement that Faizal had asked the

applicant, whether he knew any person who could arrange a meeting with Zulfikar and who would listen to him; that the applicant disclosed to Faizal that Tarique's close friend Akhtar was a close relative of the complainant and that he would help him bring about a settlement; that pursuant thereto Faizal met Tarique to see if a settlement was possible; that Tarique disclosed to Faizal that there was another way of getting the settlement done and that he knew one person, who could get the work done on behalf of Faizal and that Zulfikar would listen to him; Tarique disclosed the name of the said person as Yusuf Bachkana, who was lodged in Mysore Jail and stated that he was closely associated with Ravi Poojari; that Faizal asked the applicant and Murtuza Shaikh to accompany Tarique to Mysore. The applicant has stated that in the Mysore jail, Tarique met one person i.e. Yusuf Bachkana and that they were sitting far away from them. He has stated that after some time Tarique called him and Murtuza and took them to meet Yusuf Bachkana. He has further stated that Tarique introduced them to Yusuf and told them, that Yusuf would ensure that Zulfikar would vacate the premises. According to the applicant, Yusuf told him, that Faizal should come and meet him personally. He has stated that for the said meeting, Faizal had given Tarique a sum of Rs.1 lakh. It also appears that on

their return, a meeting took place on 18th February, 2015 at Persian Darbar Restaurant, between Faizal, Tarique and the complainant- Zulfikar. Admittedly, the applicant was not present at the said meeting. It appears that after the said meeting, Faizal told the applicant that he would have to go to Mysore to meet Yusuf and that the applicant would have to accompany him. Thereafter, Faizal, the applicant and Tarique flew to Mysore to meet Yusuf, who was admitted in a hospital. It appears that a meeting took place in the hospital, between Tarique, Faizal and Yusuf. At that time, the applicant was standing on the side. It appears that Yusuf asked Faizal to speak to some person on the phone, pursuant to which, Faizal spoke to the person on the phone. It appears that subsequently, when the applicant asked Faizal as to whom he was speaking to, and was addressing as 'Sir, Sir', Faizal disclosed that he was speaking to one Ravi Poojari. He has stated that thereafter, Tarique and Faizal started interacting with each other, directly. The applicant has in his confessional statement stated, that Tarique had disclosed to him, that Ravi Poojari had called up the complainant- Zulfikar and had threatened him and that he was afraid. He has stated that pursuant thereto, he asked Tarique to be careful. He has stated that on 3rd April, 2015, he learnt that Ravi Poojari, at the behest of

Faizal and Yusuf, had threatened the complainant and had asked him to vacate the Sutarwala Chawl. Although, there are CDR records and transcripts of conversation, between Tarique and the applicant, prima facie, there is nothing incriminating in the said transcripts. The learned APP has not pointed out any conversation, which could be said to be incriminating. There are no allegations that the applicant had threatened the complainant or had participated in the meetings that were held, between Tarique, Faizal and Yusuf or between the complainant, Faizal and Tarique. It appears, that the applicant, an employee of Faizal would accompany him everywhere. The applicant had himself surrendered before the police. The applicant has no antecedents. It also appears that co-accused – Faizal Wadgama was enlarged on bail by this Court (Coram:Smt.Sadhana S. Jadhav, J.), vide order dated 23rd February, 2017 passed in Bail Application No.2167 of 2016, under Section 167(2) of Code of Criminal Procedure. Apart, from the confession, there is no incriminating material in the entire charge-sheet, which connects the applicant with the alleged offence.

9. Considering the material on record, qua the applicant, *prima facie*, it is difficult to come to a conclusion that the applicant is guilty of the offences with which he is charged.

10. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- with one or two local solvent sureties in the like amount;
- ii) The Applicant shall attend the D.C.B., C.I.D., Mumbai office, on 1st and 3rd Monday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court

as well as to the concerned Police Station, in writing;

iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall co-operate in the conduct of the trial;

vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within two week's after his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

11. The Application is allowed and disposed of in above terms.

12. It is made clear that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

13. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)