

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

BAIL APPLICATION NO.2402 OF 2016

Mr. Abhishek @ Bappa Apurva Kasbe

... Applicant

vs.

The State of Maharashtra

... Respondent

.....

Mr. Vaibhav V. Ugle for the Applicant.

Mr. S. R. Agarkar, APP for the State.

CORAM : T. V. NALAWADE, J.

DATE : 08.08.2017.

P.C.:

1. The Applicant is filed for Bail in FIR No. 66 of 2016 registered in Khadak Police Station Pune for offenses Punishable under Section 307, 120 B, 143, 144, 147, 148, 149 of Indian Penal Code and Section 3 read with Section 25 (1-B), Section 5/27(1) of Arms Act and Section 37 (1) (3) read with Section 135 of Bombay Police Act and Section 3 (i) (ii) and Section 3 (4) of M.C.O.C. Act. Both the sides are heard.

2. The papers of investigation show that one Kunal Pol had formed one gang of 30 to 40 youngster in the year 2006. Dispute started amongst these youngster in the year 2013 over keeping control over this gang and then two groups came to be formed. Jangla Satpute and Ajay Shinde and the youngster of their side formed group of 15 to 20 friends and the other boys like Navnath Lodha, Bappa Kasbe (present Applicant) Nagesh Gangaone, Appa Banekar and another 15 to 20 youngster formed second group. There used to be quarrels between these two groups. In one incident Kunal Pol came to be murdered on 13th November 2013 and he was murdered by group of Jangla Satpute and Ajay Shinde. Ajay Shinde is the first Informant of the present

matter. Motive is given in the present matter that Appa Banekar and the members of his gang were angry with Ajay Shinde due to the murder of Kunal Pol and they were searching for an opportunity to finish Ajay Shinde.

3. Present incident took place on 11th March 2015. A lady involved in the present matter Meghna is a friend of Ajay Shinde and they intended to marry with each other. On the day of the incident this lady and Ajay Shinde came in Scorpio vehicle in front of the residential place of this lady. After parking the vehicle when they got down from the vehicle and they started walking towards the residential place of this lady and when they were crossing the road to go towards the building, brother of the lady, Martand noticed that 10 to 12 persons were running after Ajay Shinde and they were holding weapons like Pistol and Choppers etc. Martand shouted to alert Ajay and asked him to run away. Ajay Shinde and this lady became frightened and when they tried to run away this lady noticed that on front side also there was a youngster of 25 years age holding Pistol and he was aiming it at them. He tried to shoot on two occasions but the arm did not fire. Ajay somehow ran towards the building and then this lady came between Ajay and the assailant to save Ajay. Aforesaid men then fired bullet at this lady. This time, he successfully fired the bullet from his pistol and his bullet hit on the right side ribs. Martand then shouted to create show that police had arrived and the persons who are assailant started running away. This lady noticed that Asif Shaikh resident of Ghorpade Pet, Pune and he was holding chopper. After shouting by this person to alter to associate they run away.

4. On the same day Ajay gave statement to police. He knew the present Applicant and he gave his name of police. He informed that Appa Banekar, the leader of the opposite group was holding the pistol and present applicant was holding the chopper and so when the bullet

was fired by Appa, present Applicant was present on the spot. The injury certificate in respect of the aforesaid lady is consistent with the aforesaid version and it shows that there was a penetrating injury due to gun shot at right abdominal region.

5. Approval is granted by the government for using provisions of MCOC Act on the basis of the history of Banekar and his associates. As against the present Applicant as many as 6 crimes were registered and they were involving use of physical force, attempt to murder and also offences punishable under Section 392 of IPC. The submissions made show that in two cases he is acquitted but the fact remains that other cases are still pending and provisions of MCOC Act are used against him. There is direct evidence and circumstantial evidence as against him and the main circumstances is the formation of gang. In view of the nature of the crimes registered against the members of this gang it cannot be said that the provisions of aforesaid special enactment cannot be used against them. Due to the bar created by the special provision for grant of bail, and in aforesaid circumstances this Court held that bail cannot be granted in favour of the present applicant. Hence the Application stands rejected.

(T. V. NALAWADE, J.)