

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2560 OF 2016

Suraj Bhagelu Gaud @ Suraj Mhatre	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.Nitin Sejpal, Advocate for the Applicant.

Ms.J.S.Lohokare, APP for the Respondent/State.

Mr.Sachin Kadam, PI, Anti-Extortion Cell, DCB, CID, Mumbai is present.

CORAM : A.M.BADAR J.

DATED : 30th OCTOBER 2017.

P.C. :

1 Applicant/accused No.5 Suraj Gaud @ Suraj Mhatre,
by this application under Section 439 of the Code of Criminal
Procedure, is seeking his release on bail in Crime No.19 of 2016
registered with Anti Extortion Cell, DCB, CID, Unit No.9, Mumbai
(Chunabhatti Police Station C.R.No.45 of 2016) for offences
punishable under Sections 452, 307, 201 read with Section 34 and
Section 120-B of the Indian Penal Code as well as under Sections
3, 25 and 27 of the Indian Arms Act, under Section 37(1)(a) of the
Maharashtra Police Act and under Sections 3(1)(ii), 3(2) and 3(4)
of the Maharashtra Control of Organized Crimes Act, 1999.

2 Heard the learned Advocate appearing for the applicant/accused No.5 Suraj Gaud @ Mhatre. By taking me through the confessional statement of accused No.8 Himanshu Rai, the learned Advocate vehemently argued that perusal of this confessional statement itself goes to show that the applicant/accused No.5 has no role to play in the crime in question. He was neither present on the spot of incident at the time of incident, nor took part in any offence as alleged. The learned Advocate further argued that statements of all relevant witnesses are recorded belatedly after a period of about one month from the date of the incident.

3 The learned Additional Public Prosecutor opposed the application by placing reliance on statements of five witnesses recorded by the prosecution and contended that version of these witnesses, *prima facie*, indicates that the applicant is the kingpin in commission of crime in question and he has provided shooters to accused No.4 Sumit @ Pappu Yerunkar for commission of the offence. The learned APP also placed reliance on confessional statement of co-accused Himanshu Rai recorded under Section 18 of the MCOC Act and sought rejection of the instant application.

4 I have carefully considered the rival submissions and also perused the charge-sheet. It is the case of prosecution that the informant was serving with a builder. On 05/02/2016 at

about 6.45 p.m., the informant returned to the office of employer after the work of survey. He found that co-employee including injured Jinesh Jain were present in the office. At about 7.00 p.m. of that day, two persons armed with pistols entered in the office and opened fire. In that indiscriminate fire, Jinesh Jain suffered injuries. According to the prosecution case, accused No.4 Sumit @ Pappu Yerunkar is gang leader of the Organized Crime Syndicate and in order to seek pecuniary gain from the builder, he has indulged in organized crime and in pursuant to his aim, firing was opened in the office of builder for gaining pecuniary advantage.

5 So far as the present applicant is concerned, according to the prosecution case, he has provided shooters to accused No.4 Sumit @ Pappu Yerunkar. One of the proposed Shooter back out from the plan hatched in pursuant to the conspiracy and he has cited as witness by the prosecution. His statement came to be recorded on 22/02/2016 i.e. soon after the incident in question. Statement of this witness reveals that on 02/02/2016, he was called by the present applicant. He made the plan. At that time, three to four persons were with the applicant. The present applicant was then informed that accused Sumit @ Pappu Yerunkar intends to teach lesson to the Builder and therefore, he is in need of some persons for opening fire at the office of Builder. Initially, this witness agreed for the said proposal, but subsequently he back out.

6 Another witness relied by the prosecution has stated that on 01/02/2016, main accused Sumit @ Pappu Yerunkar was in company of the present applicant and thereafter the present applicant had informed the said witness that main accused Sumit @ Pappu Yerunkar wants to teach lesson to the Builder at Chunabhatti. On 03/02/2016, as per version of this witness, the present applicant had been to his office and informed him that Sumit @ Pappu wants some young boys for execution of work. Statement of other witnesses relied by the prosecution also shows that the present applicant was in company of accused No.4 Sumit @ Pappu Yerunkar prior to the alleged incident of firing and had taken active role in hatching this conspiracy. Even confessional statement of accused No.8 Himanshu Rai also indicates the same fact.

7 In the light of foregoing discussion, considering complicity of the applicant in the crime in question as well as considering the nature of offences alleged against him, no case for grant of bail is made out.

8 The application is, therefore, rejected.

(A.M.BADAR J.)