

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

CRIMINAL BAIL APPLICATION NO. 244 OF 2018

Mohd. Asif Niyaz Siddiqui	... Applicant
Versus	
The State of Maharashtra	... Respondent

.....

Ms Anjali Patil i/b Arun K. Rajput for Applicant.
Mrs. A. A. Takalkar, APP for the State.
Mr. Dinesh M. Desai, Asstt. Commissioner of Police, present.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 20th AUGUST, 2018.

P. C.:

1. This is an application for bail in connection with C.R.No.88 of 2017 registered with Shivaji Nagar Police Station for the offence under Sections 307, 387, 452, 34 of I.P.C. and under Sections 4, 25 of Arms Act. Subsequently, the provisions of MCOC Act were invoked in the present case. On completing investigation, the charge-sheet has been filed and the proceedings are pending before the Special Court for MCOC.

2. In the complaint, lodged on 8th March, 2017, it is alleged that on 7th March, 2017 the accused Fakira, his son Mustafa and the applicant had entered into the house of complainant. Mustafa was carrying sword in his hand, whereas the applicant was holding knife. The complainant was assaulted on account of the fact that he had not vacated the premises. The co-accused had tried to give blow on the complainant by sword on his head and neck, which was avoided by the complainant and when he tried to give another blow, shielded it by putting across his hand. As a result he sustained injury. It is also alleged that the applicant had given blow by knife on his back. However, in subsequent statement on 12th March, 2017 it was alleged that the applicant did not thrust the knife on the back of the complainant, but he merely pointed out the knife. Learned Counsel for the applicant also drew my attention to the injury certificate, which mentions that the complainant had sustained wound on his left hand which is grievous in nature. No injury is shown to have been reflected on the back of the complainant.

3. It is submitted that except the aforesaid material, there is no other evidence against the applicant. It is submitted that there are

no criminal antecedents against the applicant. The provisions of MCOC were applied considering the fact that there were 11 cases against the co-accused. However, it could not be pointed out that applicant had participated in the cases which are pending against the co-accused. In the circumstances, taking into consideration the role assigned to the applicant in the present crime and also in the light of supplementary statement dated 12th March, 2017 as well as injury certificate, the applicant had prayed for bail.

4. Learned APP submitted that the trial has already commenced. The evidence of two witnesses is already recorded and the prosecution proposes to examine about 10 more witnesses. It is undisputed that there are no criminal antecedents against the applicant.

5. Considering the aforesaid circumstances and in the light of role assigned to the applicant, the applicant can be granted bail. The applicant is in custody from 9th March, 2017. He did not assault complainant. There is no evidence that he is member of organised gang. He did not participated aby other crime allegedly committed by co-accused. The embargo under the provisions of

MCOC Act would not cause any impediment in grant of bail to the applicant. Hence, I pass the following order.

ORDER

- (i) Criminal Bail Application No. 244 of 2018 is allowed.
 - (ii) The applicant is directed to be released on bail in connection with C.R.No. 88 of 2017 registered with Shivaji Nagar Police Station and in M.C.O.C. Special Case No. 6 of 2017 pending in the special Court for M.C.O.C. cases at Greater Bombay, on furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount.
 - (iii) The applicant shall report the Assistant Commissioner of Police, Deonar Division, Mumbai once in a month on first Saturday between 10.00 a.m. and 12.00 noon till further orders.
6. Criminal application stands disposed of.

(PRAKASH D. NAIK, J.)