

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 428 OF 2018**

Assuddin Khurshid Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Gautam D. Padohilal for the Applicant

Mr. A. A. Palkar, A.P.P for the Respondent-State

ACP Mr. Bajirao Bhosale from Thane City Police Station is present

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 3rd APRIL, 2018

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. I-137 of 2017 registered with the Naupada Police Station, Thane, for the alleged offences punishable under Sections 399, 400, 401, 402, 120(B) of the Indian Penal Code; Sections 4, 25 of the Arms Act; r/w Sections 37(1), 135 of the Bombay Police Act and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in the said case. He submitted that nothing incriminating was found when the applicant was arrested, either on his person or in the hotel room. He submitted that even the statement recorded by the applicant under the MCOC Act is not incriminating in any way. According to the learned counsel, the confessional statement of the applicant recorded under the MCOC Act will show that the applicant had come to Mumbai to give financial help to his brother, who was suffering from AIDS.

4. Learned A.P.P opposed the application. Learned A.P.P has filed the affidavit of Bajirao Bhosale, Assistant Commissioner of Police attached to Thane Crime Branch, Thane City. According to the learned A.P.P, all the accused had come with the intent to commit robbery of gold at Teen Haath Naka, Thane. Learned A.P.P does not dispute the fact that nothing was recovered from the person of the applicant nor was anything recovered from his room, where he was apprehended i.e. from Royal Heritage. He submitted that although the confessional statement of the applicant is not

incriminating, the statement of Sachin Gunjal recorded under Section 164 of the Cr. P. C. shows that the present applicant and others would come to meet accused No. 1 and that they would come to meet accused No. 1 in a Santro Car. He submitted that in the confessional statement of co-accused Mohd. Jamil Akhtar (main accused), the co-accused has named the applicant. It appears that subsequently, the co-accused Mohd. Jamil Akhtar has retracted from the said statement.

5. Perused the charge-sheet. Admittedly, nothing incriminating was found when the applicant was arrested, either on his person or in the room in which he was staying. The confessional statement of the applicant recorded under the MCOC Act is also not incriminating and does not, in any way, show his complicity. As far as the statement of Sachin Gunjal is concerned, he has only stated that during the stay of accused No. 1 in hotel China Gate, he had witnessed the present applicant and other co-accused visiting accused No. 1- Mohd. Jamil Akhtar, in a Santro Car. He has also stated that he had seen one Santro Car having the gas cutter, oxygen cylinder and various tools and other accessories. The said witness has not stated as to when the applicant had visited hotel China Gate and when he

had seen the Santro Car. As far as statement of co-accused Mohd. Jamil Akhtar (original accused No. 1) is concerned, he has named the applicant along with other co-accused. However, the statement of co-accused was subsequently retracted.

6. It appears that there is one antecedent against the applicant, of the year 2015 for an alleged offence punishable under Sections 454, 457, 380, 201, 411, 34 of the Indian Penal Code. However, the applicant is on bail in the said case. As far as the present case is concerned, considering the nature of evidence as against the applicant and the material *qua* him, there are no reasonable grounds to believe that the applicant is guilty of the offence with which he is charged.

7. 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 executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) The applicant shall not leave the jurisdiction of Thane and Mumbai, without the prior permission of the trial Court;
- (iv) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (vi) The applicant to cooperate with the conduct of the trial;

(vii) The applicant shall file an undertaking in the trial Court with regard to clauses (ii) to (vi), within two weeks of his release;

(viii) If there are two consecutive defaults in appearing before the trial Court or in reporting to the Investigating Officer and if there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

REVATI MOHITE DERE, J.