

14-BA 573 of 2018

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

BAIL APPLICATION No. 573 OF 2018

Gurudev Ramesh Marathe

...Applicant

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. Rajiv Patil, Senior Counsel i/b. Mr. Vishal Laxman Kalekar for Applicant

Ms. Veera Shinde -APP

Mr. G.S. Madgulkar, DYSP, B.D., Dehu Road, Police Station

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE 14, 2018

P.C.

1. Heard. This is an application filed under Section 439 of the Criminal Procedure Code.

2. The Applicant herein is arrested on 9th December, 2016 in Crime No. 332 of 2016 registered at Talegaon Dabhade Police Station for the offence punishable under Section 302, 395, 143, 147, 148, 149, 120 (B) of the Indian Penal Code, Section 3 and 4 r/w 25 and 27 of the Arms Act and Section 3(1) (ii) and 3 (4) of the MCOC Act, 1999.

2. It is the case of the prosecution that on 16th October, 2016, a report was lodged at Talegaon Dabhade Police Station by one Sandip Shelke alleging

therein that the family had certain quarrels with one Sham Dabhade and his brother Bunty Dabhade and his associates. At that time, Sham Dabhade had entered into his office and assaulted his brother Sachin with sword. On 16th October, 2016, Sachin Shelke had left the house in the morning at about 9.20 a.m. At about 10.45 a.m. when Sandip Shelke was passing through Khandge Petrol Pump, he had seen Mercedes Car of his brother Sachin Shelke and he had seen that 10/15 persons were assaulting his brother Sachin. When he was proceeding in the said direction, he heard noise of the Pistol fired on Sachin. By the time he reached, the assailants were left the spot. He saw his brother in a pool of blood and he was taken him to Pavana Hospital. It is apparent from the recital of the incident, he had not named the Applicant. The investigating agency had recorded the statement of one Sanjay Shelke, who disclosed that on the date of the incident, when he was proceeding towards Pavana Hospital to see Sachin Shelke, he has seen present Applicant on the road. It was taken as incriminating circumstances against the present Applicant and he was arrested on 9th December, 2-16. He was arraigned as an accused by the Sanctioning Authority sanctioned of the provisions of the MCOC Act in the present case.

3. The learned counsel for the Applicant vehemently submits that there is no material on record to show that the present Applicant has any nexus with the principal accused – Sham Dabhade. The learned counsel for the Applicant produced the memo of statement of the present Applicant wherein he has stated that after Sachin expired, he was informed about the death of Sachin.

4. It is apparent that the said evidence is an inadmissible evidence. The learned APP submit that the Applicant has criminal antecedent i.e. Crime No. 129 of 2014 and the present crime.

5. Mr. Patil, learned Senior Counsel submits that the FIR on the basis of which the Applicant herein was shown as an accused in Crime No. 129 of 2014 has been quashed by this Court vide order dated 5th October, 2016. The said order is taken on record and marked Article 'X' for the purpose of identification.

6. Upon perusal of the papers of investigation and after hearing the respective counsel, it can be safely said that there is no material on record to indicate that the complicity of the present Applicant in Crime No. 332 of 2016. Hence, the Applicant has made out a case for grant of bail. However, the observations made hereinabove are prima facie in nature and restricted only to the present Application filed under Section 439 of the Criminal Procedure Code and shall not be taken into consideration while deciding the application for

discharge or at the time of trial. Hence, the following order:

ORDER

- (i) Bail application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing the P.R. Bond in the sum of Rs.50,000/- and one and more sureties in the like amount.
- (iii) The Applicant shall not reside in Talegaon Dabhade for six months after he is released on bail. The Applicant shall inform the police about the place of residence, cell phone number and other details.

Bail application is disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]