

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

BAIL APPLICATION NO. 1683 OF 2017

Sagar Mhasku Modak.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Satyam H. Nimbalkar, advocate for applicant.

Ms. P.P. Shinde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 16, 2018**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 10/9/2015 in Crime No. 338 of 2015 registered at Loni Kalbhor Police Station for offence punishable under section 302, 120-B read with section 34 of

the Indian Penal Code and section 3(25) of Arms Act and Section 3(1)(i)(ii) and 3(4) of Maharashtra Control of Organised Crime Act.

3 It is the case of the prosecution that on 9/9/2015 Ramdas Modak lodged a report at the police station alleging therein that they had quarrels with Gaikwad family since long. There were N.C. complaints lodged against each other at the police station. That on 9/9/2015 in the afternoon at about 12.30 p.m. he alongwith Amol Gaikwad and Hemant Gaikwad were sitting and chitchatting at the tea stall of Bala Zhende. After some time they had started proceeding towards the house of his cousin Vishal Modak. They reached there at about 3.15 p.m. He was proceeding towards the house of his brother. When he was ascending staircase of his brother's house, he heard sound of firing. When he turned back, he had seen Mangesh Modak and 3 other person had fired at his brother. He had given description of the clothes worn by the said assailants. He has carried his brother Hemant to Noble Hospital, where he was declared dead on admission. Hence, on the basis of the said report, Crime No. 338

of 2015 was registered. Investigation is completed and charge-sheet is filed.

4 In the present case, the prosecution has filed affidavit. It is more than clear that the applicant has no criminal antecedent. The applicant has not been charge-sheeted alongwith Tushar Namdeo Hambir in other case. Learned APP has submitted that in the course of investigation, the investigating officer had recorded statement of one Santosh Modak who had disclosed to the police that in the month of August, he had been to his agricultural land which is adjacent to the land of Anil Gaikwad. He had heard some voices from the rooms constructed by Anil Gaikwad and at that time, he had seen Uttam Gaikwad and Sudam Gaikwad and others hatching conspiracy that they would eliminate Hemant Gaikwad with the help of hired killer, to whom they would pay Rs. 25 Lakhs. It is pertinent to note that the present applicant has not been named by Santosh Modak.

5 Learned Counsel for the applicant vehemently submits that the applicant has been falsely implicated in the present case. In fact, he happens to be the relative of the deceased as well as some of the accused persons.

6 In the facts and circumstances of the case, it cannot be said that in the eventuality that the applicant is enlarged on bail he would indulge into similar case and therefore, this Court would record the satisfaction under section 21(4) of the Maharashtra Control of Organised Crime Act. Moreover, there is no material on record to substantiate the allegations that the applicant is connected with the organised crime syndicate led by Tushar Hambir. Hence, the applicant has made out a case for grant of bail.

7 However, it is made clear that the observations made hereinabove are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The trial court shall not be influenced by the same while

deciding the application for discharge or for quashing of FIR or at the time of trial.

8 Hence following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs. 50,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall not reside within the jurisdiction of Loni Kalbhor Police station till the conclusion of the trial.

(iv) The applicants shall not tamper with the evidence.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)