

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1978 OF 2018

Ubed Adam Shaikh @ Adil ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Rajendra J. Rathod with Mr.Ali Bubere, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

Mr.Kalpesh Deshmukh, PSI, Anti Extortion Cell, DCB, CID is present in person.

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CORAM : PRAKASH D. NAIK J.

DATED : 19th DECEMBER 2018.

P.C. :

1 This is an application for bail in Crime in 365 of 2017 registered with Shivaji Park Police Station. The investigation of the said Crime was transferred to DCB, CID vide Crime No.58 of 2017 . The offences were registered under Sections 385, 387, 120-B read with Section 34 of the Indian Penal Code. The FIR was lodged on 29th December 2017. Investigation was transferred to DCB CID. Investigation was conducted vide C.R.No.58 of 2017. Provisions of Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as “MCOC Act”) were invoked under Sections

3(1)(ii) , 3(2) and 3(4). The applicant was arrested on 30th December 2017.

2 The case of the prosecution is that the complainant is in the construction business and in the year 2013, the complainant met accused No.4. In 2014, the complainant purchased a plot admeasuring 1200 Square Yard behind Lilawati Hospital for Rs.12,00,00,000/- through Bilal Shamsi and the brokerage of Rs.30,00,000/- paid to Bilal Shamsi/accused No.4. In May 2014 accused No.4/Bilal Shamsi informed complainant about the availability of plot at Bandra at cheaper rate. The complainant went to see the plot. The complainant gave call to one Adil, who sent one person to receive him and that unknown person took the complainant to hutment area near Bandra, where Adil slapped him, pointed knife on his neck and demanded 25,00,000/-. It is further alleged that thereafter the complainant requested Adil that he may be permitted to talk to Bilal Shamsi (accused No.4). Complainant spoke to Adil. Bilal came there and asked the complainant to bring money from home and threatened him. After that, the complainant called his wife and told her to send Rs.5,00,000/- through driver. Thereafter driver brought amount of Rs.5 lakhs and gavit it to Adil. Accused No.4 Bilal also told the complainant to pay the balance amount of Rs.20 lakhs within one week. Accused No.4 Bilal told the complainant that Adil is a goonda and if the complainant had not paid the amount, he would

have lost his life. Bilal kept on demanding money and this complainant kept on giving money. Thereafter, complainant received call by internet phone and the caller demanded Rs.20,00,000/-. Complainant gave amount of Rs.20 lakhs to Bilal. It is further alleged that complainant had entered into agreement with Vipul Galani in respect of development of 40,000/- yard plot. The complainant and one Ashish Agarwal agreed to develop the said plot. Ashish Agarwal paid Rs.2,70,000/- to informant. Ashish Agarwal died. Informant paid Rs.50,00,000/- to wife of Agarwal. She demanded balance amount. Informant received threat from Haji. He was told to pay the balance amount to Mrs.Agarwal.

3 Investigation was completed. The charge-sheet has been filed. Four accused were arrested in the present case. It is contention of the applicant that his name is Ubed Adam Shaikh and not 'Adil'. The requisite documents with regard to identity are annexed to this application. It is submitted that accused no.3 Nurulhuda Shamsullah Khan @ Nasim Khan was granted bail by trial court on 15th June 2018. There is no evidence to show that applicant is member of conspiracy to extort money from complainant. It is submitted that applicant's identity has not been established. The applicant has never met the complainant. He has no connection with Haji. There is no evidence in that regard. The complainant has alleged that mobile number of Adil was given by

Bilal. In the circumstances it was necessary to conduct identification parade which is not conducted. There is no evidence that applicant is member of crime syndicate. The incident is of 2014 and FIR is lodged in 2017. There is no evidence to show that applicant has any time contacted wanted accused Haji. Learned APP relied on statement of complainant, Arrest Panchnama, statement of wife of complainant and statement of driver. It is submitted that CDR analysis is submitted to trial court which shows that applicant was in contact with Bilal Shamsi.

4 The FIR was lodged on 29th December 2017. The alleged incident had occurred in May 2014. According to complainant Bilal Shamsi gave number of person who would show the plot available for sale and complainant gave call to said person. Adil came to spot and threatened complainant and forced him to give amount of Rs.5 lakhs. Bilal Shamsi also told complainant to give amount demanded by Adil. The complainant then referred to the rates received by him and from Haji who told him to give money to Bilal. The complainant has referred to other transactions and involvements of Bilal. The person who had given threat calls has not referred to applicant. The applicant also disputed his identity. Arrest panchnama refers to Ubed Adam Shaikh @ Adil as the person arrested by police. According to complainant, he met complainant in May 2014. FIR is lodged in 2017. There is no link established between applicant and wanted

accused. Wife of complainant has referred to Adil as one of the person who was visiting house with Bilal. There is no identification parade to identify applicant by said witness. Her statement was recorded on 2nd January 2018. Statement of driver was recorded on 2nd January 2018. The applicant is in custody from date of arrest.

5 The learned Additional Public Prosecutor submitted, on instructions, that there are no criminal antecedents against the applicant.

6 In the light of nature of evidence against the applicant, there is no impediment to not grant bail although on account of recourse under Section 21 of the MCOC Act. Hence, I pass the following Order :

ORDER

- (i) Bail Application No.1978 of 2018 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with Crime No.365 of 2017 registered with Shivaji Park Police Station which was transferred to DCB, CID vide Crime No.58 of 2017 for the offences under Sections 385, 387, 120-B read with Section 34 of the Indian Penal Code read with Section 25 of the Arms Act and under Sections 3(1)(ii) , 3(2) and 3(4) of the MCOC

Act which is subject matter of MCOC Special Case No.7 of 2018 pending in the Court of MCOC Special Court, Greater Mumbai, on furnishing PR Bond of Rs.25,000/- with one or more sureties in the like amount ;

- (iii) The applicant shall report the DCB, CID once in month on first Friday of month between 12.00 noon and 1.00 p.m. till further Orders;
- (iv) The applicant shall not tamper with the evidence and shall attend trial Court proceedings regularly, unless exempted by the Court for some reason;
- (v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks.

(PRAKASH D. NAIK J.)