

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

BAIL APPLICATION NO.2186 OF 2017

Irphan Raju Shaikh		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Vikas Balasaheb Shivarkar for the Applicant.
Mr. Vinod Chate, APP for the State.

Mr. N.B. Dhaygude, HC, Phaltan Gramin Police Station, present.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 8th August, 2018

P.C.:

1 Heard.

2 This is a subsequent application seeking enlargement on bail. The previous application was rejected on merits vide order dated 22nd August 2016. At the outset, it can be said that there is no change in the circumstance. However, learned counsel for the applicant insisted upon filing of the charge-sheet and this Court was constrained to go into the merits of the matter. The applicant is an

accused in Crime No. 247 of 2015, registered at Phaltan Police Station on 15th December 2015. The applicant has been charge-sheeted for the offences punishable under Sections 302, 307, 387, 143, 147, 148, 149, 120B of Indian Penal Code, 3, 25, 4, 27 of Indian Arms Act and 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act.

3 Learned counsel for the applicant submits that after the earlier application was rejected, the investigating agency has collected the call details record of the applicant Irphan Shaikh. That on the day of incident, he had received a call from Cellphone no. 8600181055. Learned counsel for the applicant submits that the said Cellphone number is not registered in the name of principal accused Bunty Kakade and therefore, it cannot be said for a moment that the applicant had given the information about the whereabouts of Jyotiram Chavan, the deceased. It was contended in the affidavit filed earlier that the Cellphone number of original accused No. 2 Bunty Kakade is 8600181055.

4 In the course of investigation, the CDRs was called and it was revealed that on the date of incident, there was telephonic communication between the present applicant and Bunty Kakade during the period 5.45 am to 7.30 am. and the incident has occurred at 7.30 am. This Court had also observed that the hotel where the incident has occurred is in close proximity of the petrol pump, where the applicant is working.

5 Learned counsel submits that Cellphone number 8600181055 is registered in the name of Shankar Maruti Bhosale. In the compilation of the charge-sheet, there is a statement of Ravindra, Dhembre who disclosed to the Police that Bunty Kakade always used to call him from the said Cellphone number and therefore he knows that the said number is being used by Bunty Kakade. The compilation of the charge-sheet further indicates that Bunty Kakade had taken the help of the present applicant to locate Jyotiram Chavan on the day of the incident. There are several offences registered against Bunty Kakade. Learned counsel for the applicant rightly submits that since the sanction is accorded for prosecution

under the provisions of MCOCA, it would be a matter to be decided at the time of the trial.

6 Learned APP submitted that there are statements of accused and the witnesses recorded under Section 164 of Cr.PC., which clearly indicate the involvement of the applicant. Learned counsel submits that he does not have the copies of the statements under Section 164 Cr.PC. However, he has received instructions to the effect that the statements under Section 164 Cr.P.C. have exonerated the applicant.

7 Learned counsel for the applicant submits that in view of the fact that the applicant has not been charge-sheeted alongwith Bunty Kakade, the provisions of MCOCA would not be attracted in any manner to the applicant.

8 Learned APP submits on instructions that accused Sharad Khavale is still absconding. The applicant has been in custody since 18th December 2015. Learned Special Court if necessary shall separate the trial of Sharad Khavale and proceed with the trial in the

present case. Since, the accused are in custody for more than 2½ years and no charge is framed as yet.

9 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial. The application being sans-merits, stands rejected.

(*Smt. Sadhana S. Jadhav, J*)