

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

BAIL APPLICATION NO.2545 OF 2017

Asif Salim Shaikh		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. A.P. Mundargi, Senior Counsel i/by Mr. Vinayak Patil for the Applicant.

Mr. Deepak Thakare a/w Ms. P.P. Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 23rd January, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 30th July, 2015 in Crime No.272 of 2015, registered at Karad City Police Station for the offences punishable under Sections 302, 307, 120(B) read with 34 Indian Penal Code, under Section 3 and 25 of the Arms Act and under Sections 3(1)(i)(ii), 3(2), 3(4), 4 of Maharashtra Control of Organized Crime Act, 1999.

3 The present applicant happens to be the son of one Salim Shaikh against whom there were several offences registered. That Salim Shaikh was arrested for causing the homicidal death of Bablu Mane. While in custody, he died.

4 On 20th July, 2015, Smt. Anusaya Bhimrao Mane, the mother of Bablu Mane lodged a report at the police station alleging therein that on 20th July, 2015 at about 8.30 am., her son Bablu was in the library for reading the newspaper. She had also followed him to open her shop Namrata Traders. When she was cleaning her shop, she heard a loud noise. She thought that it was a tyre burst. However, she has soon realised that her son Bablu has been shot. She had given the description of the person, whom she had seen. Bablu had succumbed to the injuries instantly. The applicant has not been named in the F.I.R. He was arrested on 30th July, 2015 after he returned from Aurangabad, where he was attending classes at Madarasa.

5 It appears that the case of the prosecution against the present applicant is that he belongs to the gang led by Salim Shaikh and therefore he is being prosecuted under the provisions of MCOC Act.

6 Learned APP submits that there are three offences registered against the applicant and therefore, he appears to be habitual offender and does not deserve to be enlarged on bail. As against this, Mr. Mundargi, the learned Senior Counsel submits that in the other two cases, the applicant is being prosecuted under Sections 419 and 420 of Indian Penal Code for using the Sim card which is not issued in his own name. It is further submitted that the applicant has not been charge-sheeted alongwith the other members of the gang of Salim Shaikh. As far as the allegation that the applicant belongs to the gang of Salim Shaikh, it cannot be considered for the simple reason that the applicant happens to be the son of Salim and was residing in the same house.

7 The prosecution has relied upon the statement of one Shakil Golandaj to show that the applicant was in search of revolver and had accompanied Mohsin Dilawar Jamadar to Hotel Ramada at Islampur. Shakil has purportedly disclosed to the police that the applicant and Mohsin had disclosed to Shakil that they wanted revolver in order to eliminate Bablu. He had accompanied one Firoz Bashir Kagdi (Mistri), who is history-sheeter. There is material on record to indicate that the applicant was at Aurangabad in Madarasa during the period of 2nd July, 2015 to 30th July, 2015. Admittedly, he was not at the scene of offence, nay he was not present in Karad city on the day of the offence. It is pertinent to note that Mohsin has

been enlarged on bail by this Court (Coram : Mrs. Revati Mohite Dere, J) vide order dated 16th June, 2017.

8 It is apparent on the face of the record that although it is the case of the prosecution that the applicant alongwith Mohsin and Firoz had made an attempt to procure the weapon, there is no material to indicate that Shakil in fact had gone to procure the revolver for the applicant or any of them. The statement of Shakil would clearly show that he had not given any weapon to the present applicant or Mohsin.

9 Learned APP has placed reliance upon the confessional statement of Firoz, in which there is mention of the name of the applicant. However, on perusal of the said confessional statement, all that can be inferred is that the applicant alongwith Firoz and Mohsin had gone to meet Shakil for purchasing the weapon, no weapon was given by him to the applicant. It is pertinent to note that Firoz has specifically stated that when Salim learnt about the fact that the present applicant was making an attempts to procure a weapons, he had sent him to Madarasa. The said statement further shows that they had exchanged cellphone numbers. The applicant had exchanged his cellphone number alongwith Shakil Golandaj. Prima facie, the confessional statement does not remotely indicate that the present applicant was present in Karad city on 20th July,

2015. There is no role attributed to the present applicant, besides the fact that he had accompanied Mohsin and Firoz to meet Shakil Golandaj. The said attempt was nipped in the bud by the father of the present applicant by sending him outside Karad city and therefore it cannot be said that the present applicant had hatched conspiracy on 20th July, 2015. It is, in these circumstances that the applicant deserves to be enlarged on bail. In the facts of the case, this Court prima facie is able to record the satisfaction under Section 21 Sub-clause 4 of MCOC Act.

10 In the facts of the case and upon hearing the learned APP and the learned Senior Counsel, this Court is of the opinion that the application under Section 439 deserves to be allowed. However, the observations made hereinabove are prima facie restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration in any other proceedings including the trial. Hence, the order :

ORDER

1 The application is allowed.

2 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.

3 The applicant shall not reside in Karad Taluka till conclusion of the trial.

4 Learned Senior Counsel, upon instructions, submits that the applicant would be residing at Satara during the period of trial and report to Satara police station till the date of framing of charge.

(Smt. Sadhana S. Jadhav, J)