

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

BAIL APPLICATION NO. 3371 OF 2018

Javed Sahebalal Shaikh	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Sanjiv P. Kadam i/b Mr. Vinayak Patil for the Applicant.
Ms. S.S. Kaushik, A.P.P. for the Respondent – State.

CORAM : P.N. DESHMUKH, J.

DATED : 12th APRIL, 2019.

P.C. :

1 Heard learned Counsel for applicant and learned A.P.P.
Perused the documents filed with the charge-sheet.

2 This application for bail is filed by Original accused No.5 in
Crime No.272 of 2015 registered at the Karad City Police Station on
20.07.2015 on the basis of report of Anusaya Mane for the offences
punishable under Sections 302, 307, 120(b) r/w 34 of I.P.C., Sections 3
and 25 of the Arms Act. Subsequently offences punishable under Sections
3(1)(i)(ii), 3(2), 3(4), 4 of Maharashtra Control of Organized Crimes Act,
1999 (MCOC Act) were added in the said crime.

3 Learned Counsel for applicant by referring to the documents
has demonstrated that no role can be attributed to applicant in any manner

to be instrumental in the commission of present crime. As according to the evidence collected and relied by the prosecution, there is nothing on record except for applicant being in service as driver of original accused No.8, since prior to incident and of some CDRs between him and original accused No.8 and original accused No.7, who is son of original accused No.8 and has, therefore, contended that only being driver of accused Nos.7 and 8, is by itself is not sufficient to involve applicant in the present crime as in his capacity as a driver he, in any case, was required to be in the company of said accused.

4 With regards to CDRs between applicant and accused Nos.7 and 8, there appears much substance when it is contended that this applicant was working as a driver for co-accused Nos.7 and 8 and as such in the normal course of his work, he is required to receive and make phone calls to said accused and, therefore, in the absence of any conversations of the CDRs relied by prosecution, this ground is too is not sufficient to reject the application. It is, therefore, prayed that application be allowed. Application is also pressed on the ground of parity as this Court by its order passed in Bail Application Nos.279 of 2018, 1727 of 2016 and 2545 of 2017, had granted bail to accused Nos.3, 4 and 7 respectively, who are attributed with similar role to that of applicant. Copy of bail orders in above applications are filed with the record. It is, therefore, prayed that

application be allowed.

5 Learned A.P.P. opposed the application on the ground that there is direct evidence establishing applicant's involvement in this crime as from the CDRs he is found in contact with co-accused Nos.7 and 8, and as such applicant's role is duly established in this crime since prior to incident and, therefore, prayed for application to be rejected.

6 It appears to be the case of prosecution that offence came to be registered on the basis of report lodged by the mother of deceased who was shot dead on 28.07.2015 at 8.30 a.m. when he was in a local library, while his informant mother was present in a shop situated opposite to said library, who on hearing loud noise, came out of the shop and witnessed deceased lying outside the library having sustained injuries. It is noted that accused No.1 who had fired the gun shot was caught on the spot by mob and was mercilessly beaten due to which he died on the spot. It is also not disputed that case against original accused No.8 is abated as he died before filing of charge-sheet. Role attributed to applicant is limited to the effect that at the time of incident, he was working as a driver on a private vehicle of deceased accused No.8 and as such was having in contact with him in person as well as telephonically. Similarly, from the record and as stated by learned A.P.P., further involvement of applicant is by way of his

purchasing some land with the assistance of co-accused No.7, who is son of deceased accused No.8 and on this limited involvement is found charge-sheeted. It is material to note that accused No.7 is admittedly released on bail by this Court. In that view of the matter applicant is found entitled for bail on merits as well as on parity with co-accused, as from the orders of this Court referred applicant's case is on better footing than the co-accused who are released on bail.

7 In the circumstances, application is allowed as per order below:

ORDER

(i) Applicant shall be released on bail in C.R. No.272 of 2015 registered with Karad City Police Station for the offences punishable under Sections 302, 307, 120(b) r/w 34 of I.P.C., Sections 3 and 25 of the Arms Act, subsequently the offences under Sections 3(1)(i)(ii), 3(2), 3(4), 4 of Maharashtra Control of Organized Crimes Act, 1999 (MCOC Act), on his executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) Applicant shall mark his presence with Karad City Police Station on the 15th day of each month initially for a period of six months and thereafter quarterly on the first day of each such month pending trial.

(iii) Applicant shall not tamper with the witnesses.

(P.N. DESHMUKH, J.)