

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 2169 OF 2018**

Irfan Ali @ Lambata Shaikh

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. M.A. Shaikh for the Applicant.

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

Mr. D.M. Desai, ACP Deonar Division present.

CORAM : A. S. GADKARI, J.**DATE : 22nd MARCH, 2019.****P.C.:-**

This is an Application under Section 439 of the Code of Criminal Procedure read with Section 21 (4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short, "*the MCOC Act*") for bail in CR No. 286 of 2016 dated 20th July, 2016 registered with Shivaji Nagar Police Station under Sections 307, 387, 120(b), 141, 143, 144, 145, 147, 148, 149, 504 and 506(2) of the Indian Penal Code and under Sections 4, 25 of the Indian Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act, now culminated into M.C.O.C. Special Case No. 22 OF 2016.

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Heard the learned counsel appearing for the Applicant and

the learned APP. Perused the charge sheet.

3 It is the prosecution case that, the principal accused namely Abdul Rehaman @ Lala Amir Shaha is the gang leader of the organized crime syndicate and has continuous unlawful activities at his discredit such as attempt to murder, rioting, threat to kill, in different parts of Mumbai and in particular in the areas of Rafiq Nagar, Baba Nagar, Shivaji Nagar of Bainganwadi. The head of the said organized crime syndicate indulges in the criminal activities for peculiar gain along with other co-accused including the present Applicant.

The provisions of MCOC Act are applied to the existing crime namely CR No. 286 of 2016. The witnesses in the present crime have named the Applicant as Irfan who along with other accused persons on 20th July, 2016 at about 8.00 p.m. threatened the witnesses with deadly weapons and also assaulted four witnesses with sharp edged weapons/swords.

4 The learned counsel for the Applicant submitted that, there are no antecedents at the discredit of the Applicant and this is the first offence. He submitted that, there is no material available on record to indicate that the Applicant will again indulge into the similar

type of crime if he released on bail and therefore, the Applicant is entitled to be released on bail.

5 By now, it is the well settled position of law that the criteria of the offences at discredit is against the organized crime syndicate and not the individual members of the said syndicate. A safe reliance is placed on the decision of the Division Bench of this Court in the case of *Govind Sakharam Ubhe Vs. State of Maharashtra*, reported in 2009 All MR (Cri.) 1903. In view thereof, I find no substance in the submission of the learned counsel for the Applicant.

6 The statement of the witnesses available on record indicate that, the nature of offence is undoubtedly grave and the Applicant being the member of the said organized crime syndicate has actively participated in the commission of the said crime.

7 In view of the above, it is difficult for this Court to record a finding that, the Applicant is *prima facie* not guilty of the commission of offence as contemplated under Section 21 (4) of the MCOC Act. Reliance is placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Vishwanath Maranna Shetty*, reported in (2013) 1 SCC (Cri.) 105= (2012) 10 SCC 561.

8 In view of the above, I find no merits in the Application.

Application is accordingly rejected.

(A.S. GADKARI, J.)