

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

BAIL APPLICATION NO.2708 OF 2018

Amir Mouddin Khan

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Kamraj R. Dubey, Advocate for the Applicant.

Mrs.Veera Shinde, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 20, 2019.

P.C. :

This is an application for bail. The applicant is arrested in connection with C.R.No.I-212 of 2011, registered with Panvel Taluka Police Station, District – Raigad, for the offences punishable under Sections 302, 363, 364, 394 and 201 of Indian Penal Code (“IPC”, for short) and Sections 3, 5 and 25 of Arms Act. Subsequently, the provisions of Maharashtra Control of Organised Crime Act, 1999 (“MCOC Act”, for short) was invoked. The applicant has been discharged by the trial Court for the offences under the provisions of MCOC Act by order dated 16th February, 2016.

2 The applicant had preferred an application for bail before this Court. The said application was rejected on merits by this Court on 6th March, 2014. In pursuant to order of discharge, the applicant had preferred a fresh application for bail before the Sessions Court, which has been rejected by order dated 14th November, 2017.

3 Learned advocate for the applicant submitted that there is no evidence against the applicant to show his involvement in the crime. The case of the prosecution suffers from serious infirmities. Applicant is in custody from 24th December, 2011. There is no progress in the trial. The previous application of bail filed by the applicant was rejected by this Court when the provisions of MCOA Act were in operation. However, subsequently, he has been discharged from the said proceedings. It is submitted that the applicant cannot be subjected to custody for indefinite period. The incarceration of the applicant for prolonged time in custody without trial violates Article 21 of the Constitution of India. Learned counsel for the applicant relied upon the decision of the Apex Court delivered in Civil Appeal Nos.6198-6199 of 2008 arising out of ***SLP (C)***

Nos.24777-24778 of 2005)¹Reliance is placed on the observation of the Court in Section 27 of the paragraph wherein it is observed that the accused is entitled for fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. State has a larger obligation to maintain law and order and preservation of peace and harmony in the society. A victim of a crime is equally entitled to a fair investigation. It is submitted that in the absence of provisions of MCOC Act, further detention of the applicant is not called for.

4 Learned APP submitted that although the applicant has been discharged from the provisions of MCOC, there is strong evidence against the applicant. The offence is of serious nature. The applicant has been identified by the complainant. Cash amount of Rs.1 lakh was recovered. There is recovery of car. The forensic report with regards to finger print supports the prosecution implicating the applicant in the crime. The applicant was initially charged under the provisions of MCOC Act. Other accused are also involved in this case. The applicant had criminal antecedents. This Court has previously rejected the bail application of the applicant on merits.

¹***Nirmal Singh Kahlon Vs. State of Punjab and Ors.***

5 I have perused the documents on record. The prosecution case is that the informant was working as a driver on the car of Ashish Bansal. On 13th December, 2011, the informant and Ashish Bansal were proceeding from his factory towards Mumbai alongwith his Hyundai i-20 car. When the car reached near Panvel side, another car came from the back side in the high speed and gave dash to the car of the informant. The informant stationed his car on the side of the road. Another vehicles came from the back side. Unknown persons alighted from the vehicle and assaulted the informant with fist and kick blows. One of them took out a knife while the other persons tied his eyes and threatened him. The informant was abducted in one car and Ashish Bansal was abducted in another car. Amount of Rs.10,000/- and mobile phone of the informant was taken away. He was dropped near Taloja jail in the midnight and he has given Rs.500/- to go home. For releasing the victim, demand of Rs.50 lakhs was made and he was compelled to make telephone calls to his relatives for arranging the ransom money. An amount of Rs.41 lakhs extracted from the relatives of the victim. Inspite of ransom of Rs.41 lakhs, the victim was not let free. But, he was murdered

by firing bullet at him. Investigation is completed and charge-sheet is filed. Provisions of MCOC Act were applied. Applicant was discharged by trial Court from the provisions of MCOC Act and case was transferred to the regular Court.

6 During the course of investigation, the prosecution has collected evidence against the accused. The report of finger print expert has been received. According to prosecution, one chance finger print developed on rear view mirror of motor car no. MH-01-AE-6006 and one chance finger print developed on driver side mirror of Motorcar No. MH-09-AZ-7575 concerned in the case are both identified with right thumb print on the F.I. slip of Amir Mohaddin Khan (Applicant). According to prosecution, 10 other cases were registered against him. While rejecting the application, this Court analysed the nature of evidence against him. Although the applicant had been discharged from the provisions of MCOC Act, the nature of evidence incriminating against him shows his involvement in the crime. It was contended by the applicant that there are discrepancies in the statement of the complainant. However, the fact remains that the informant and accused no.1 was present at the time of incident and accused no.1 has been identified in the parade conducted on 3rd March,

2012. The contention of the applicant is that parade was conducted belatedly. Accused no.1 had produced the car used in the crime. There is recovery of Rs.1 lakh at his instance. Pistol was also recovered from him. The finger print report and the ballistic report are in favour of prosecution. In the circumstances, no case for grant of bail is made out. However, considering the fact that the applicant is in custody from 24th December, 2011, trial can be expedited.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2708 of 2018, is rejected;
- (ii) Trial is expedited. Trial Court shall conclude the trial within a period of six months.

(PRAKASH D. NAIK, J.)