

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

CRIMINAL BAIL APPLICATION NO.3107 OF 2018

Firoz Abdul Rehman Shaikh	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Ms.Sushma T. Mishra, Advocate for the Applicant.
Mr.S.R. Agarkar, APP for the Respondent – State.
Mr.Amol Zende, ACP Turbhe Division, Navi Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 13, 2019.

P.C. :

This is an application for bail in connection with C.R.No.I-392 of 2017, registered with Vashi Police Station, Navi Mumbai. Initially, the offences were registered under Section 395, 341, 342, 452, 114, 400 and 120(B) of Indian Penal Code (“IPC”, for short) and Sections 3 and 25 of the Arms Act. Applicant was arrested on 6th November, 2017. Subsequently approval was sought for invoking provisions of Maharashtra Control of Organised Crime Act, 1999 (“MCOC Act”, for short), which was granted, and, thereafter Sections 3(1)(ii), 3(2), 3(4) of MCOC Act, were invoked. On completing investigation, charge – sheet is filed.

2 Learned counsel for the applicant submits that there is no cogent evidence to establish the complicity of the applicant in the crime. Applicant is not the member of any crime syndicate. There are no criminal antecedents against the applicant. He is not involved in any case with the gang leader. The recovery conducted by the investigating machinery qua the applicant had no nexus with the alleged crime. The confessional statement of the applicant is not voluntary. The same is retracted by the applicant. The applicant was detained in custody at another police station. There is no independent evidence against the applicant showing his involvement in the crime. The amount recovered from the applicant was out of sale proceeds of the premises and has no connection with the crime.

3 Learned APP submitted that there is sufficient evidence against the applicant. There is recovery of cash of Rs.12,50,000/-, at the instance of the applicant. There is also recovery of toy gun, which is used in the crime from the applicant. It is further submitted that after commission of the crime, the accused had proceeded to the premises of accused no.2 and, the CCTV Footage of the building where the accused no.2 resides establish the presence of the applicant along with

other accused. It is further submitted that the CCTV Footage of the traffic junction also shows the presence of the applicant. Learned counsel for the applicant, however, disputed the said position and submits that the traffic police constable do not support the version. Learned counsel for the applicant also submits that the CCTV Footage of Viviana Mall, where the alleged conspiracy was hatched, do not show the presence of the applicant. Learned APP, however, submits that the CDR Record shows the calls made by the applicant and the other accused, which establishes link of the applicant with the co-accused.

4 I have perused the documents on record and considered the submissions advanced by both the parties. Prosecution is relying on the confessional statement of the applicant wherein it is allegedly stated that applicant was part of conspiracy and had participated in the crime. Prosecution case is that the accused had visited the house of the complainant under the pretext of delivering the gift article, and, thereafter entered into the house and committed the robbery of cash and jewellery worth Rs.1,96,00,000/-. The prosecution is also relying upon the CCTV Footage as stated hereinabove and the recovery of the cash amount as well as the toy gun. Reliance is also placed on CDR

Record showing the complicity of the applicant. The submission about the veracity of the confessional statement recorded by the investigating machinery recorded under MCOC Act, can be considered at the time of trial, *prima facie*, there is evidence against the applicant showing his involvement, and, therefore, no case for grant of bail is made out. Hence, Bail Application is rejected.

(PRAKASH D. NAIK, J.)