

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

CRIMINAL BAIL APPLICATION NO. 414 OF 2019

Aamir Karim Pathan	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Nitin B. Kamble, Advocate for the Applicant.
Mr. H. J. Dedhia, APP for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th January, 2020

PC :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.164/17 registered with Kondhwa Police Station, Pune. Initially the offence was registered under sections 307, 120(B), 143, 147, 148, 149 of the Indian Penal Code and under section 4(25) of Arms Act and section 37(1) of Maharashtra Police Act. Subsequently, section 3(1)(ii), 3(2) 3(4) of Maharashtra Control of Organized Crimes Act (MCOC) were also added.

2. The incident has occurred on 08/05/2017 in which one Shubham Jadhav was assaulted. The FIR was lodged by mother of Shubham. Admittedly she is not an eyewitness, but she had seen Shubham leaving their house at 10.45 p.m. on 07/05/2017

to go to Gymnasium. Thereafter the first informant Chhaya Jadhav received a phone call that Shubham was assaulted. The first informant and others went in search of Shubham. He was found lying in injured condition on open ground near Mhasoba temple. Shubham was removed to Chintamani Hospital, thereafter to Rao Hospital and subsequently to Rubi Hospital. He was admitted in ICU. The investigation was carried out. The Applicant was arrested.

3. The provisions of MCOC were invoked on 31/05/2017. The chargesheet is filed. The chargesheet contains statements of two eyewitnesses Somesh Laxman Pawar and Vijay Sanjay Shinde. They had witnessed the actual assault committed on Shubham by about 8 to 9 persons with sharp weapons. The assailants were not known to them. However, on

23/06/2017 identification parade was held wherein both these witnesses have identified the present Applicant.

4. The chargesheet contains injury certificate of Shubham. He has suffered four serious injuries on his head, face and chest. Dimensions of those five injuries were substantial. All those injuries were described as fatal. Offence u/s 307 of the Indian Penal Code is clearly made out. The application of MCOC shows that the present Applicant was a member of an organized

crime syndicate led by one Ashfaq to establish supremacy over the rival gang in the area.

5. Learned advocate for the applicant submitted that the applicant is in custody from 18th May, 2017. There is no material to show that the applicant being member of crime syndicate was involved in carrying unlawful violence activities. The provisions of MCOC Act are not applicable. The alleged gang leader Ashpaq @ Gabya Babulal Shaikh has been granted bail by the MCOC Special Court vide order dated 19th July, 2019. It is further submitted that the role attributed to the applicant by the eye witness is vague. The applicant was identified in the parade which was conducted belatedly. The role assigned to the applicant is that he had assaulted the victim by fist and kick blows. It is further submitted that there is no other cogent evidence to corroborate the involvement of the applicant in the crime. The confessional statement of the applicant recorded under Section 18 of MCOC Act was retracted. The said statement in any case do not indicated that the applicant was member of crime syndicate. The Sessions Court while granting bail to Ashpaq has considered the fact that the other cases registered against him were resulted in acquittal and there was no material to invoke provisions of MCOC Act.

6. Learned APP submitted that the applicant has been identified by two witnesses. The injured had sustained several injuries. He was brutally assaulted. He is not in a position to give statement. As and when he is in position to give the statements, further investigation is required to be conducted. The confession of the applicant was recorded under Section 18 of MCOC Act which shows his involvement in the crime. This Court had rejected the application for bail preferred by Majhar Kashmiri. Eye witnesses had given similar role to the said accused.

7. I have perused the charge-sheet. On account of rivalry between two groups, the injured Shubham was brutally assaulted by the accused. The applicant had participated in the crime. He was identified by two witnesses. Assuming that the applicant has been attributed role of assaulting the deceased by fist and kick blows, the offence is of serious nature. The deceased had sustained several injuries. There is recovery of clothes and motorcycle from the applicant. The learned counsel for the applicant however submitted that the said motorcycle was not owned by the applicant. The confessional statement of the applicant was recorded under Section 18 of MCOC Act. In the said confessional statement he has referred to his involvement in the crime. He has also referred to the conspiracy by the accused to assault the injured. The said statement

also indicates that he had actively participated in the crime. The co-accused Ashpaq was not named by the eye witnesses nor he was identified. Majhar Kashmiri was attributed similar role. His application has been rejected by this Court. The applicant contends that confessional statements has been retracted by him subsequently. The said aspect can be considered at the time of trial. While rejecting application for bail preferred by the Majhar Kashmiri, this Court had observed that, considering the circumstances against him and application of MCOC, at this stage it is not possible to record prima facie observations that the offences under Section MCOC Act is not committed and even otherwise the offences alleged by the said accused is serious. The injured had sustained grievous injuries on CLW over frontal region, CLW over chin, including lower lips, frontal region up to left side forehead and CLW on right side chest and CLW over occipital region. Considering the aforesaid circumstance, no case for grant of bail is made out.

ORDER

Criminal Bail Application No.414 of 2019 stands rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)