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

CRIMINAL BAIL APPLICATION NO.922 OF 2018

Mahesh Munna Pal

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. A. P. Mundargi, Senior Counsel a/w Mr. Subir Sarkar, i/b Mr. S. H. Nimbalkar, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

API – Rajiv Patil, Kalyan Taluka Police Station, Thane (Rural), is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd MARCH, 2020

P.C. :

1. Heard learned senior counsel for the applicant and learned A.P.P. for the State.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-123 of 2015 registered with the Kalyan Taluka Police Station, for the alleged offences punishable under Sections 307, 143, 147, 148, 149, 504, 507, 427, 120B of the Indian Penal Code; under Sections 3(1), 25 and 27 of the Arms Act and under Sections 3(1) (ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act ('M.C.O.C. Act').

3. Learned Senior Counsel for the Applicant submits that the Applicant is in custody since his arrest on 23rd May, 2015 i.e. for more than 4 ½ years. He submits that although the applicant has been named in the FIR, it is doubtful, whether the applicant was present at the spot, when the alleged incident took place i.e. on 21st May, 2015. He submits that there is no recovery of any weapon at the instance of the applicant. According to the learned senior counsel, in the said incident which allegedly took place on 21st May, 2015, not a single person has been injured. He further submits that the prosecution case with respect to the conspiracy to kill the complainant, is also doubtful, having regard to the fact that the place where the alleged conspiracy is stated to have taken place was demolished by the municipal authorities much prior to the date when the alleged conspiracy is stated to have taken place, also pointing to the falsity of the prosecution case.

4. Learned APP opposed the application. Learned APP has filed an affidavit of Rajendra Madhavrao More, Deputy Superintendent of Police, Murbad Division, District – Thane (Rural). She submits that the complainant as well as the other witnesses have disclosed the name of the applicant as being present at the spot and of having fired in the direction of

the complainant and others. She submits that the applicant has cases registered against him with the same police station i.e. Kalyan Taluka Police Station. She, however, does not dispute the fact that the applicant is in custody for more 4 ½ years.

5. Perused the papers. According to the complainant – Sunil Dhumal, he used to supply building material to Poddar Developers. The complainant has alleged that the other co-accused was also in the business of supplying building material and was upset, as the complainant was supplying building material to Poddar Developers. It is alleged that on 11th February, 2015, some other co-accused came and abused and threatened him. Admittedly, the applicant is not stated to have been amongst the said persons, who abused and threatened the complainant on 11th February, 2015. It is further alleged by the complainant that on 20th May, 2015, when he was going along with his friends in a Duster car, the alleged incident of firing took place. The complainant has stated that some of his friends were following him in the Innova Car, when the incident took place on the Murbad Road. He has stated that both the cars i.e. Duster and Innova were being followed by 3 motorcycles. The complainant has stated that he had identified the said persons and that the applicant was one of the said persons on the motorcycle. According to the complainant, in the intervening night of

20th and 21st May, 2015, at about 12.55 a.m., Anup Gondhali, who was on the motorcycle, overtook the complainant's car. Co-accused – Ganesh Mhaskar is alleged to have been sitting on the said motorcycle as pillion and that Ganesh is alleged to have held a pistol in his hand. According to the complainant, Ganesh fired in his direction with a pistol, however, the bullet missed him and hit the car. The complainant has also alleged that the applicant had fired in the direction of the 2 vehicles i.e. Duster and Innova Car.

6. It appears that the applicant has been named in the FIR and by some of the witnesses, who were travelling in the Duster and Innova Car. Admittedly, none received injuries in the said incident. There is no recovery of any weapon at the instance of the applicant. The spot panchanama shows that the bullet that was found at the spot was one, fired from Ganesh Mhaskar's weapon. It also appears that there is recovery of a weapon at the instance of Pandurang Sante. This Court in an order passed in Criminal Bail Application of another co-accused – Santosh Gondhale, after having considered the allegations against the said co-accused – Santosh i.e. of hatching of conspiracy to kill the complainant observed that '*Prima facie*, the statement of the said witness that he was present at the time when conspiracy was hatched appears doubtful, inasmuch as, admittedly, the

office of Anup Gondhali was demolished by the Municipal Authorities on 12th May, 2015. The same is evident from the statement of Navnath Kavade, Police Constable, whose statement is on page 95 of the application'. It is not in dispute that the applicant is in custody since 23rd May, 2015 i.e. for more than 4 ½ years. Under M.C.O.C. Act, the minimum sentence is 5 years.

7. Considering the fact that the applicant is in custody for more than 4 ½ years and the evidence against him, the applicant be enlarged on bail, on the following terms and conditions:-

ORDER

(i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.2,00,000/- with one or two local solvent sureties in the like amount;

(ii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

(iii) The Applicant shall not enter the jurisdiction of Murbad and Kalyan Taluka Police Station, except for the purpose of attending the court case in Kalyan, on the dates given by the trial Court;

(iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;

(v) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing and shall not impede the conduct of the trial;

(vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within one week of his release;

(vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.