

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

**CRIMINAL BAIL APPLICATION NO. 1792 OF 2019
WITH
CRIMINAL APPLICATION NO. 1240 OF 2019**

Amin Momin Khan . . . Applicant

Versus

The State of Maharashtra . . . Respondent

. . .

Mr. Rahul Arote, Advocate for the Applicant.
Mr. S.R. Agarkar, APP for Respondent-State.
Mr. Samir A. Vaidya, Advocate for Applicant in Appln.
1240/2019.
Mr. Dilip Dhamunse, P.I. Powai Police Station.

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CORAM : SANDEEP. K. SHINDE, J.
DATE : 14th JANUARY, 2020.

PC.

Heard.

1. It is an application under Section 439 of Code of Criminal Procedure, 1973.

2. Applicant seeks enlargement on bail in

connection with Crime no. 405/ 2019 registered with Powai Police Station for the alleged offences punishable under Section 307, 387, 341, 506(ii), 323 r/w 34 of the Indian Penal Code, 1860 ('IPC' for short).

3. The applicant was apprehended soon after the incident on 15.03.2019 when he had applied for the bail. This Court granted liberty to withdraw the application since at the relevant time, the prosecution had applied for sanction under the provisions of the Maharashtra Control Organized Crime Act, 1999 (MCOCA). Learned counsel submits that sanction was refused. Hence, the present application.

4. Prosecution has filed the affidavit of one Dilip Gajanan Dhamunse, Police Inspector who has opposed the bail application. In paragraph No. 9, antecedents of the applicant are put on record which are reproduced thus :

Sr.No.	Police Station	CR No.	Sections
01	Powai	77/04	302, 34, 143, 144, 145, 147, 148, 149 IPC r/w 4, 25 Indian Arms Act.
02	Sakinaka	282/01	325, 34 IPC
03	Sakinaka	62/01	379, 34 IPC
04	Aarey	137/02	454, 457, 380 IPC
05	Powai	208/13	353, 332, 504, 506(ii) IPC
06	Powai	629/14	302, 303, 307, 364, 143, 144, 147, 148, 149, 201, 120-B IPC r/w 4, 25 Indian Arms Act r/w 37(1), 135 Mumbai Police Act.
07	Aarey	176/18	386, 364(A), 109 IPC
08	Powai	405/18	307, 363, 387, 341, 506(ii), 323, 34 IPC r/w 4, 25 Arms Act.
09	Powai	406/18	354, 452, 323, 506(ii) 34 IPC
10	Powai	469/18	386, 387, 364(A), 506(ii), 34 IPC r/w 4, 25 Indian Arms Act
11	Powai	666/14	324 of IPC

5. Besides, in paragraph no.11, it is stated that Powai Police Station had initiated chapter proceedings against the applicant in case no. 43 of 2018.

6. The facts aforesaid clearly suggest that applicant has criminal antecedents. Furthermore, the

affidavit further shows that applicant was released on a temporary bail subsequent to demise of his father. In paragraph no.12 of the affidavit, prosecution has stated thus :

I respectfully submit that on account of demise of Applicant/ accused's father, after obtaining order of the Learned Additional Sessions Judge, Dindoshi, the Applicant / accused was attended the occasion of 40th Day of his father's demise. At that time, number of persons gathered in the vicinity to see the Applicant / accused, when tat the instance of the Applicant / accused the associates of the Applicant / accused was recorded video recording saying " Mai Hu Don" "Miya Bhai Miya Bhai" "Mai Hoo Khalnayak" and made it viral on What Apps and You Tube Apps. I respectfully submit that in this manner, the Applicant / accused was again created reign of terror in the area.

7. Learned counsel for the applicant submits that in Crime No.77/2004 for the alleged offences punishable under Section 302 of IPC, the Hon'ble Apex Court had acquitted the applicant. A copy of the said order of the Hon'ble Apex Court is placed on record. It shows the Hon'ble Apex Court has extended benefit of

doubt to the applicant who was the accused no.5 in that case. It is argued that in all other cases registered between 2001 and 2014, the applicant has been acquitted. It is also submitted that applicant has also been acquitted in Crime No.406 of 2018 for the alleged offences punishable under Section 354 of IPC. Therefore, the submission is that applicant has been implicated falsely in it or another case by the police.

8. So far as present case is concerned, it is alleged by the Vegetable Vendor i.e. the complainant that the associates of the applicant had taken him away by force with an intent to cause him hurt and thereby detained him for extortion. The incident had taken place on 05.08.2018 at 06:00 pm. and thereafter at 09:30 pm. It is alleged that he was detained for extortion and was also assaulted by applicant and his associates. The injury certificate prima facie, shows he had suffered a grievous injury, on the left ear.

9. Though the investigation in the case is over

and charge-sheet has been filed, the criminal antecedents put on record and the averments made in the affidavit are sufficient to note that, that the applicant has been repeatedly committing offences and created reign of terror in the area where he is living.

10. In view of the facts stated in the affidavit and for the reasons herein above, possibility of the tempering with prosecution witnesses and the evidence cannot be ruled out. The State has also initiated the chapter proceedings against the applicant.

11. In view of the nature of the accusations made against the applicant and for the reasons and the circumstances stated herein above, the bail application is hereby rejected.

12. The intervention application is disposed off.

13. It is made clear that the observations made hereinabove shall be construed as expression of opinion only for the purpose of refusal to grant bail

and the same shall not in any way influence the trial
in other proceedings.

(*SANDEEP. K. SHINDE, J.*)_