

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

BAIL APPLICATION NO. 3538 OF 2019

Firoz Bashir Kagadi (Mistri) ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Vinayak Patil, Advocate for the Applicant.

Mr. Y. Y. Dabake, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th AUGUST, 2021.

PER COURT:

1. The applicant is arrested on 27th July, 2015 in connection with C.R. No. 272 of 2015 registered with Karad City Police Station Dist. Satara on 20th July, 2015 for offence under Sections 307 of Indian Penal Code (for short “IPC”).

2. The incident in question had occurred on 20th July, 2015. The complaint was lodged by the mother of the deceased. The case of the prosecution is that the complainant and the deceased were conducting shop Namrata Traders, situated at Guruvar Peth, Karad. On 20th July, 2015 at about 8.30 a.m. Babalu was reading newspaper and complainant was cleaning her shop.

She heard sound and came out of shop. Babalu was lying on floor. He was bleeding. One person was standing besides him. He pushed the complainant and fired two rounds on her knee. She fell down. She was taken to hospital for treatment. Supplementary statement of complainant was recorded. She stated that after incident of firing Babalu had told people gathered at the spot that, the assailant Babrya is associate of 'Sallya'. Subsequently, she learnt that, Babalu has expired. The assailant was assaulted by people with stone, rod, cement pipe and he died. The offence was altered to Section 302 of IPC. Approval was obtained under Section 23(1) (a) of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act"). Sanction was granted to prosecute under the provisions of Sections 3(1)(i)(ii), 3(2), 3(4) and 4 of MCOC Act. During the course of investigation accused were arrested. On completing investigation, charge-sheet was filed.

3. The applicant preferred an application for bail before the Special Court, under the MCOC Act. The said application was rejected by order dated 14th September, 2018.

4. Learned Sr. Advocate Mr. Mundargi representing the applicant submitted that the applicant is in custody since last 6 years. There is no progress in trial. The applicant is not party to

conspiracy with the main accused. The provisions of MCOC Act cannot be applied to applicant. The applicant is not member of crime syndicate headed by the main accused Salim Shaikh. The applicant has no enmity with the deceased. The confessional statement does not lead to any inference that the applicant was a member of crime syndicate. The applicant has no criminal antecedents. He is not involved in any case with the alleged gang leader. The accused concerned with procuring the arms were granted bail. Shakil Golandaj was not implicated as accused in this case. Accused Nos. 3, 4, 5 & 7 were granted bail. The applicant has not been named in the First Information Report (for short 'FIR'). He was not present at the scene of offence at the time of alleged incident of firing. It is the case of the prosecution that on 8th or 9th July, 2015 the applicant along with accused Nos. 4 & 7 approached Shakil Golandaj to purchase pistol from him. However, no pistol was procured from him. Co-accused Asif Shaikh, Mohsin Jamadar were granted bail by this Court. After the occurrence of incident, name of the applicant and co-accused were published in the print media which has vitiated the identification. On perusal of the confessional statement of the applicant, it can be seen that the pistol was not given to the applicant by Shakil Golandaj. He had no knowledge regarding activity of accused No.1. There is nothing

to indicate that the applicant was part of conspiracy to kill the deceased. After the incident, news was flashed in electronic media. There is no call transcription on record. The prosecution is relying upon the alleged extra judicial confession. Statement of the said witness was recorded on 24th July, 2015. There is no evidence on record to indicate that the applicant is member of crime syndicate headed by accused Salim Shaikh. The death of the victim has no connection with the recovery of applicant's money. Confession in police custody was retracted.

5. Learned APP submitted that there is sufficient evidence to show the involvement of the applicant in the offence. The prosecution is relying upon confessional statement of the applicant recorded under Section 18 of MCOC Act. The applicant had accompanied accused No.1 Babar at the scene of offence. Prior to the incident, the applicant had accompanied accused No.1 to verify the availability of the victim. The applicant had played vital role. The prosecution is relying upon extra judicial confession of the applicant. The case of the co-accused, who has been granted bail can be distinguished and the applicant is not entitled for parity. The applicant was acquainted with accused Salim Shaikh. He had approached Shakil Golandaj for procuring arms. The Investigating

Officer has filed affidavit opposing the application for bail. C.D.R. of the location implicates the applicant. Statement of Shakil Golandaj and Gurusiddh Jadhav refers to the presence of the applicant at Hotel Ramada. The applicant and co-accused hatched conspiracy to commit murder of Babalu Mane. The accused No.1 and applicant kept watch on deceased. Witness Shakil Golandaj has stated that applicant visited hotel Ramada to take fire arms from Shakil with accused Nos. 4 and 7 Mohsin Jamadar and Asif Shaikh. Statement of Musib Munir Momin shows that applicant was present at hotel Ramada and exchanged his shirt with hotel owner. Extra judicial confession was made to Wahid Kacchi. C.D.R./S.D.R. of applicant shows location at spot and that accused were in contact with each other. Confession of applicant recorded under Section 18 of MCOC Act shows his involvement.

6. I have perused the documents on record. The incident of attacking the deceased Babalu had occurred on account of the enmity between deceased and accused Salim Shaikh. The case of the prosecution is that both were involved in the business of sand. Both of them were trying to hold supremacy over each other. Accused No.1 Babar was assigned the work of killing deceased Babalu. The accused No.1 Babar was assaulted by the people, who

had gathered at the scene of offence which had resulted in his death. The applicant is not named in the FIR. Apparently after the incident news was published in the media. The applicant is not assailant in the offence. Statement of Shashikala Mane was recorded on 20th July, 2015. She is the eye witness to incident. Chandrakant Mane is brother of Babalu. He stated that Babalu is in business of sand. Cases are registered against him with Karad City Police Station. Offence is registered against him for firing at Salim Shaikh. Babalu was earning good profits in sand business. Salim Shaikh was also involved in similar business. Various offences were registered against him. It is not the case of the prosecution that the applicant was present at the scene of offence when the victim was shot at by accused No.1. Statement of Musib Munir Momin dated 24th July, 2015 stated that he is working at hotel of Wahid Kacchi. On 20th July, 2015 applicant had visited hotel at 8.45 a.m. He wore shirt of this witness and thereafter he left towards Karad on motorcycle. Thereafter, he again returned to hotel. Wahid Kacchi told him to leave the place. Change of shirt does not appears to be incriminating circumstance against the applicant as the applicant was not the assailant, nor he was present at the place of firing and there was no reason to change the shirt. The prosecution is relying on statement of Wahid Kacchi dated 24th July, 2015. According to

him applicant visited his hotel around 9.00 a.m. and he left the hotel. He again came back within 15 minutes. On enquiry, applicant told him that Babar khan had called him at vegetable Mandai. He went there. Babar told him to accompany him to verify if Bablu is near his house. He accompanied Babar and found that Babalu was reading newspaper. The applicant dropped Babar near market. Babar told him that he would fire at Babalu and he should pick him after firing so that they can flee from place. Babar fired at Babalu. People started running. Due to fear applicant ran away from the place of incident. This conversation between applicant and Wahid Kacchi do not indicate that before verifying availability of Babalu, Babar had disclosed to applicant that there was plan to kill Babalu. After recce, Babar had allegedly stated that, he would fire at Babalu. Wahid Kacchi, further stated that, applicant told him there was plan to kill Babalu. However, there is no cogent evidence on record to establish that applicant was part of conspiracy to liquidate Babalu. Statements of Musib and Wahid were recorded after incident was reported by media. Statement of Bashir Ali Pathan was recorded on 25th July, 2015. He stated that Shakil Golandaj had visited him in June 2015. He told him to call applicant. Applicant met him and told him that he is in need of pistol. On enquiry with applicant, he told him that Salim Shaikh is

in need of pistol for firing at one person. On further enquiry, he stated that Babalu would be shot. Statement of these witnesses are contradictory to confessional statement of applicant. Thereafter, applicant told him that weapon is brought by Mohsin and Javed. Statement of Shakil Golandaj was recorded on 30th July, 2015. He stated that in July, applicant called him at hotel Ramada. He was accompanied by Suhel Baraskar and Gurusiddh Jadhav. Applicant met him. He introduced Mohsin Jamadar and Asif Shaikh to Shakil. Mohsin demanded 9 mm pistol and bullets for killing Babalu. On next day Shakil told applicant not to bring such persons to him and he does not do such work. Thus, Shakil or applicant had not provided any arm to the accused which was used committing crime. Statement of Hanif Shaikh was recorded on 31st July, 2015. He stated that, on 20th July, 2015 applicant and Babar Khan had visited vending cart of Riyaz for breakfast and they left together. Statement of Riyaz Diwan dated 31st July, 2015 is similar. Confessional statement of applicant was recorded under Section 18 of MCOC Act on 29th October, 2015. He stated that he got acquainted with Salim Shaikh two months ago. The applicant had invested Rs. two lakhs in sand business. He was not getting returns from one Faiyaz. He was advised to meet Salim Shaikh. Hence, applicant met Salim Shaikh and informed him about his dues.

Thereafter, applicant met Mohsin and Salim at Ashok Chowk. They enquired with applicant about, nature of talk, he had with Salim Shaikh. They would visit Shakil for weapon. He met Bashir Pathan. All of them met Shakil. There was discussion about pistols. On next day Shakil Golandaj told him that he do not have weapons. This information was provided to Mohsin and Asif. On 18th July, 2015, Babar Khan contacted him and called him at Market Yard. Babar took him to Karve Naka. He pointed out one house and told him that it is house of Babalu. He dropped Babar at Gate No.1. On 19th July, 2015 Babar called him at Karve Naka. They went towards house of Babalu and went to hotel for snacks. On 20th July, 2015, Babar called him. They had breakfast. They went to Mandai. Babar was dropped near fish market. Babar told him that he is proceeding to kill Babalu. Applicant heard firing, thereafter applicant tried to contact others.

7. The confessional statement of the applicant do not indicate in any manner that applicant was party to any conspiracy to kill Babalu. The tenor of confessional statement shows that applicant got acquainted with Salim Shaikh just two months prior to the incident of murder of Babalu. He had approached Salim regarding his dues. He has not participated in any violent, criminal

activities of Salim Shaikh. There was no talk between Salim Shaikh and applicant to liquidate Babalu. The applicant is not involved in any offence with Salim Shaikh. There are no criminal antecedents against applicant. The previous statements are contrary to confessional statement. There was no discussion with Mohsin and Asif regarding conspiracy to kill Babalu. These two persons, told applicant to join them to visit Shakil Golandaj. No weapon was provided by Shaikh Golandaj. Babar Khan did not disclose to him that there is plan to kill Babalu before taking him to house of Babalu. Thus, the confessional statement does not lead to inference that applicant is conspirator of the crime.

8. Accused Ibrahim sayyed has been granted bail by this Court vide order dated 4th July, 2018. Mohsin Jamadar has been granted bail by this Court vide order dated 16th July, 2017. The allegations against him is that, he went to hotel to meet Shakil Golandaj to procure pistol. Javed Shaikh was granted bail vide order dated 12th April, 2019 by this Court. Irfan Inamadar was granted bail by Sessions Court. Asif Salim Shaikh was granted bail by this Court vide order dated 23rd January, 2018.

9. There is no material to establish that applicant is member of crime syndicate headed by Salim Shaikh. Considering

the nature of evidence and for the reasons discussed herein above, the embargo under Section 21(4) of MCOC Act would not be impediment to grant bail to the applicant.

10. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No.3538 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 272 of 2015 registered with Karad City Police Station Dist. Satara which is subject matter of MCOC Special Case No.2 of 2016, on executing PR. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant shall not tamper with the evidence.
- (v) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)