

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

CRIMINAL BAIL APPLICATION NO.1912 OF 2021

Asif Abdul Sattar Khan
Versus
The State of Maharashtra

...Applicant
...Respondent

Mr. Aditya Sharma for the Applicant

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

***CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
FRIDAY, 25th JUNE 2021***

P.C. :

1 This is the 4th application preferred by the applicant seeking his enlargement on bail in connection with C.R. No. 288 of 2014 registered with the Juhu Police Station, Mumbai and subsequently transferred to DCB, CID and renumbered as C.R. No. 105 of 2014, for the alleged offences punishable under Sections 307, 120B, 387, 465, 468, 471, 379, 34 of the Indian Penal Code ('IPC'), under Sections 3, 25, 27 of the Indian Arms Act and under Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

2 Learned counsel for the applicant submits that the applicant is in custody since December 2014 and has undergone almost 7 years of imprisonment. Learned counsel submits that the trial has still not concluded and that the prospect of the trial concluding in the immediate near future also appears to be bleak, since in the charge-sheet, police have cited the number of witnesses to be examined, as 135. He submits that till date, only 32 witnesses have been examined. Learned counsel for the applicant submits that even the role of the applicant *prima facie* does not show the complicity of the applicant in the alleged crime. He submits that in the incident, not a single person was injured and that the bullet was fired in the direction of the building. He further submits that even the confessional statement of co-accused Sufiyan Dilshad Shaikh, does not show the complicity of the applicant in the alleged offence. According to the learned counsel, the applicant is also not amongst the persons who is alleged to have fired in the direction of the building. He submits that it is the prosecution case that the applicant was sitting between the two men on the motorcycle i.e. between the bike rider and the pillion rider and that the pillion rider(not the applicant) fired in the air towards the building. He submits that no one was injured in the incident nor are there any CDR records to show the presence of the applicant at the spot. According to the learned counsel, neither Section 307 of the Indian Penal Code will be

attracted nor will the provisions of MCOCA. Learned counsel relied on the order of the Division Bench of this Court (Coram : S. S. Shinde & Manish Pitale, JJ.) passed on 23rd February 2021 in the case of ***The National Investigation Agency vs. Areeb Ejaz Majeed in Criminal Appeal No.389 of 2020*** and of the Apex Court in ***Union of India V/s. K.A.Najeeb in Cri. Appeal N. 98 of 2021***. He submits that apart from the merits of the case, the applicant has undergone 7 years in custody and as such having regard to the delay in the conduct of the trial, the applicant be enlarged on bail.

3 Learned A.P.P opposes the application. She submits that although the prosecution has cited 135 witnesses in the charge-sheet, the police intend to examine 10-15 more witnesses. On merits, learned A.P.P does not dispute the fact that the applicant is not amongst the persons who fired in the direction of the building/car. Learned APP submits that the applicant had purchased 5 sim-cards from a mobile shop. She further submits that the fact, that 3 persons were riding on a two wheeler is fortified by the CCTV camera, although the identity of the 3 persons is not clear.

4 Perused the papers. The first bail application of the applicant being Criminal Bail Application No. 1041/2016 was disposed of as

withdrawn with liberty to file a fresh application after MCOC Case No. 2/2015, in which the applicant was an accused, was decided. The applicant was acquitted of the offences under MCOCA in the said case and was convicted under the provisions of Indian Penal Code for 5 years. The applicant has already undergone the said sentence during trial. After the MCOC Case No. 2/2015 was decided, the applicant filed 2nd Bail Application i.e. Criminal Bail Application No. 1440/2018 seeking his enlargement on bail in the present C.R, i.e. C.R. No. 105/2014. The said application was rejected by this Court (Coram : Revati Mohite Dere, J.) vide order dated 24th September 2018. Liberty was however granted to the applicant to file a fresh application in the event the trial does not conclude within a reasonable period. Thereafter, the applicant preferred a third bail application i.e. Criminal Bail Application No. 2156/2019, which was rejected by this Court (Coram : Sandeep K. Shinde, J.) vide order dated 5th November 2019, as trial had commenced and one witness was examined.

5 This is the 4th bail application. The said application has been filed pursuant to the liberty granted by this Court vide order dated 24th September 2018 to file a fresh application in the event the trial does not conclude within a reasonable time.

6 According to the prosecution, the first informant was threatened by Ravi Pujari and wanted accused – Charanjit Singh @ Sunil Raniyal @ Bittu for getting promotional show at U.S.A. on cost-to-cost basis of a movie. The first informant was also threatened if the calls were not responded to, he would face consequences. According to the first informant, on 24th August 2014, he was informed by his staff that his brother's car has been damaged. The first informant asked his staff to give the CCTV footage and find out the cause. It transpired that in the night of 23rd August 2014 at about 10:30 p.m, three unidentified armed assailants had fired at his bungalow resulting in damage to the parked car and shattering the window pane on the 2nd floor of his bungalow. On inquiring with the watchmen, the first informant learnt that three unidentified armed assailants had come on a motorcycle and had fired in towards the bungalow and thereafter fled. Thereafter, the first informant is alleged to have received threatening SMS/calls. Pursuant to the said incident, C.R. No. 288 of 2014 was registered with the Juhu Police Station, Mumbai, which was subsequently transferred to DCB, CID and renumbered as C.R. No. 105 of 2014. During the course of investigation, the applicant was arrested.

7 A perusal of the confessional statement of co-accused- Sufiyan Dilshad Shaikh *prima facie* does not show the complicity of the applicant

in the present crime. The said confessional statement only shows that the applicant was introduced by the accused No.2 to co-accused-Sufiyan Dilshad Shaikh, as friend. The evidence as against the applicant is that two watchmen who were at the spot i.e. at the time of firing towards the vehicle/building, have identified the applicant as being one of the persons on the motorcycle. The CCTV footage allegedly reveals that three persons had come on a motorcycle, however, the identity of the said persons is not clear. Image shows that there were three persons on a motorcycle. According to the watchmen, the applicant was sitting pillion along with another accused on the motorcycle i.e. the applicant was sitting between the person riding the bike and another person sitting pillion. The person sitting behind the applicant is alleged to have fired in the direction of the building. The firing resulted in damaging a vehicle and a glass window pane of the building. Admittedly, no one was injured in the said firing. According to the prosecution, the applicant had secured four sim-cards on the basis of forged documents.

8 As noted earlier, whilst rejecting the second bail application of the applicant vide order dated 24th September 2018, liberty was granted to the applicant to file a fresh application if the trial did not conclude within a reasonable period. The applicant admittedly is in custody since 2014 for

about 7 years. Till date, 32 witnesses have been examined. Although, in the charge-sheet, 132 witnesses have been cited, learned APP states that the prosecution intends to examine 10-15 more witnesses. From the pace at which the trial is progressing, it does not appear that the same will conclude soon.

9 The principal charge as against the applicant is 307 of the IPC, coupled with the provisions under the MCOC Act. Whether or not the offence would be one under Section 307 is a matter which will be decided by the trial Court.

10 The applicant has filed an affidavit-cum-undertaking dated 19th June 2021 duly affirmed before the Jailor, Taloja Central Prison, where he has undertaken not to leave the jurisdiction of Mumbai and Thane, without the permission of the trial Court. He has also undertaken to remain present on each and every date in the trial Court, till the conclusion of the trial.

11 Having regard to the role of the applicant, the facts as stated aforesaid, the fact that the applicant is in custody for about 7 years and has already undergone more than minimum sentence prescribed under the provisions of the MCOC Act, also keeping in mind the provisions of

Section 436-A Cr.P.C, as well as the applicant's affidavit-cum-undertaking, the application deserves to be allowed. Accordingly, the applicant be enlarged on bail, on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the office of DCB CID, Unit-IX, every fortnight on a Saturday between 4:00 p.m to 6:00 p.m, till the conclusion of his trial,
- (iii) The applicant shall not leave the jurisdiction of Mumbai and Thane, without the permission of the trial Court;
- (iv) 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

- (vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vii) The applicant shall deposit his passport, if any, in the trial Court, before his release;
- (viii) The applicant shall file an undertaking with regard to clauses (ii) to (vii) in the trial Court, within two weeks of his release;
- (ix) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

12 The application is allowed in the aforesaid terms and is accordingly disposed of.

13 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.

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

REVATI MOHITE DERE, J.