

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

CRIMINAL BAIL APPLICATION NO. 1383 OF 2019

Prakash Deochand More	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ganesh K. Gole a/w Mr. Ateet Shirodkar for the Applicant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

WEDNESDAY, 7th APRIL 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-150 of 2017 registered with the Dhule City Police Station, Dhule, for the alleged offences punishable under Sections 302, 120B, 504, 506 of the Indian Penal Code and under Sections 3 r/w 25 and 4 r/w 25 of the Arms Act. Subsequently, the provisions of the Maharashtra Control of Organized Crime Act ('MCOC Act') were imposed. The case is presently pending in the Nashik Court.

3 Learned counsel for the applicant submits that the incident in question had taken place on 18th July 2017 at Dhule. He submits that the only allegation as against the applicant is that co-accused No. 3-Bhima Deore and 4-Dadu Deore visited the applicant's house at Ulhasnagar. He submits that no date when the said accused had visited is mentioned by the prosecution. He submits that admittedly, the applicant is not alleged to be present in Dhule at the time of the incident, by the prosecution. He submits that the applicant is the brother-in-law of accused Nos. 3 and 4 and that cannot be said to be an incriminating circumstance so as to make allegations as against the applicant, much less, to arrest him. He submits that the applicant is languishing in jail since 2017 on this flimsy charge.

4 Learned A.P.P opposes the application by filing an affidavit of Shrikant B. Ghumare, Deputy Superintendent of Police. In para 10 of the affidavit, it is stated that the applicant is the brother-in-law of the accused Nos. 1, 3 and 4 and that he had harboured accused Nos. 3 and 4. He submits that the applicant had not informed the police about the incident and had allowed the accused Nos. 3 and 4 to stay with him.

5 Perused the papers. On 18th July 2017 at about 6:15 a.m, when the complainant-Shaikh Faruk Fattu and Guddya (deceased) was sitting at Gopal Tea House, it is alleged that co-accused Rajendra Deore @ Bhadra came there with a pistol and fired at Guddya. Rajendra Deore's two brothers i.e. Bhima and Dadu, are also alleged to have come there. Dadu is alleged to have thrown chilly powder on Guddya's face and Bhima assaulted Guddya by sword. Thereafter, one Chhota Papa-Goyar is alleged to have come there with a pistol in his hand and fired at Guddya and one Bada Papa-Vikky Goyar and others are alleged to have assaulted Guddya with sword, iron rod and sickle. It is further alleged that one Shyam Goyar asked the accused to kill Guddya.

6 Admittedly, the applicant was not present in Dhule at the time of the alleged incident. The applicant is a resident of Ulhasnagar. It appears that the applicant is the brother-in-law of accused Nos. 1, 3 and 4. According to the prosecution, accused Nos. 3-Bhima and 4-Dadu went and stayed with the applicant at Ulhasnagar, post the incident. No date has been spelt out by the prosecution, as to when the said accused stayed with the applicant. The applicant has no antecedents. This is the only evidence as against the applicant. The applicant is in custody for more than 3 years, only on this allegation.

7 Considering the material on record, the bar of Section 21(4) of the MCOC Act will not apply. Accordingly, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station as and when called;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (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 file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;
- (vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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

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.