

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.854 OF 2020

Aftab Anjum Patel .. Applicant

Vs.

The State of Maharashtra & Anr. .. Respondents

ALONG WITH
BAIL APPLICATION NO.1205 OF 2021

Shamim Anjum Patel .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Shabbir Ahmed Shora for the Applicant in Bail Application No.854 of 2020.

Mr. Shadab Bilal Khopekar for the Applicant in Bail Application No.1205 of 2021.

Ms. Rutuja Ambekar, A.P.P. for the State.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 05TH AUGUST, 2021.

PRONOUNCED ON : 20TH AUGUST, 2021.

ORDER:-

1. The two Applicants are charge-sheeted in C.R. No.80 of 2016, which subsequently, invoked provisions of MCOCA and was culminated in MCOCA Case No.5 of 2017. The concerned C.R. invoked Section 307, 143, 144, 147, 148, 149, 323, 324, 326, 114 of the IPC read with Sections 4 and 25 of the Arms Act and the Applicant Aftab Anjum Patel is arraigned as Accused No.1 whereas, Shamim Anjum Patel is arraigned as Accused No.6. Aftab Patel came to be arrested on 14/10/2016 whereas, Shamim Patel is arrested on 12/07/2018 and they remain incarcerated since then as their applications for release on bail came to be rejected by the Special Court, Thane.

2. The submission of the respective counsel is that they have been wrongly arraigned as accused. On behalf of Shamim Patel, it is argued that the arrest is effected after two years and the said Applicant is not even named in the FIR. Moreover, the submission on behalf of Shamim Patel is that the Complainant himself has criminal background and there is no material compiled in the charge-sheet to establish any commonality with the gang leader thereby justifying invocation of provisions of the MCOCA. As far as Aftab Patel is concerned, the submission advanced is that it is a case of false implication and reference is made to an FIR lodged by the Applicant's mother Shamim Patel on 04/02/2016 at Kashimira Police Station at 1.05 a.m. thereby

invoking offences under Sections 394 and 354 of the IPC. As a counterblast to the subject FIR, present FIR No.80 of 2016 is registered where the Applicants Aftab, his father, brother and brother-in-law as well as the security guards/watchmen are arraigned as accused. The said CR wrongly invokes Section 307 of the IPC is the submission.

3. The C.R. registered with Kashimira Police Station, which arraigns both the Applicants as accused, invokes Section 307 as a prime offence and the Complainant is one Peshnawaz Khan @ Sonu, who alleged that on 03/02/2016, at the night hours and, to be precise at 11.30 hours, in front of Shamim Bungalow located at Kashimira Road, District Thane, when the Complainant along with his friends after having dinner in Fountain Hotel, was en-route his home, one Khalidbhai told him to meet Anjum Patel. He responded by saying that he had a fight with Aftab in the past and, if he accompanies Khalidbhai, some untoward incident would take place and on assurance given by Khalidbhai, they approached the bungalow. On reaching there, Aftab Patel welcomed him and it is alleged that after that, Aftab Patel went inside the bungalow and returned with a sword. It is then alleged that the Complainant was assaulted in his head by sword and all other accused persons assisted him in the said assault with an attempt to kill him.

4. During the course of investigation, the statement of various

witnesses came to be recorded and it surfaced that the attack on the Complainant is mounted by constituting a gang being headed by Anjum Gulam Rasool Patel, who operates an organized crime syndicate and both the Applicants are members of the gang. It is also revealed that the gang has indulged into serious offences of murder, attempt to murder, rioting, grievous assault, encroachment of land, forming of unlawful assembly, etc.

5. The material compiled in the charge-sheet reveal that the organized crime syndicate formed under the leadership of Anjum Gulam Rasool Patel is continuously and actively engaged in unlawful activities and more than one charge sheet of the cognizable cases, having punishment of more than three years or more have been filed against the gang leader before the competent court within the preceding 10 years and the competent courts have taken cognizance of the charge-sheets. This prompted invocation of the provisions of Sections 3(1)(ii), 3(2) and 3(4) of the MCOCA. An approval was granted by the Inspector General of Police, Konkan Range, for invoking the provisions of the MCOCA to C.R. No.80 of 2016 registered with Kashimira Police Station and the Sub Divisional Police Officer, Mira Road Division was handed over the investigation of the said case. Sanction came to be accorded for prosecuting the accused persons by the Additional Director General of Police on 15/02/2017 and the charge-sheet came to be instituted against the accused persons on 27/02/2017.

6. As far as the Applicant Aftab Patel is concerned, the charge-sheet reveals that he actively participated in the aforesaid incident resulting in registration of C.R. No.80 of 2016 and the evidence compiled in the charge-sheet is to the effect that he was armed with a sword and he assaulted the Complainant on his head. The sword was seized from the spot in presence of two panchas. There are statements of three eye-witnesses compiled in the charge-sheet who speak in sync with the Complainant. Their statements are also recorded under Section 164 of the Cr.P.C. during the course of investigation.

The Applicant was absconding near about eight months after commission of offence.

7. Learned A.P.P. has argued that the Applicant has criminal antecedents, which reflect that he is continuously involved in illegal activities and, if released on bail, the possibility of he indulging into similar offences in future, cannot be overruled. As far as Anjum Gulam Rasool Patel is concerned, it is submitted that he has 28 criminal antecedents and the Applicant Aftab Patel has been attributed 14 offences, out of which, he has eight offences in common with the gang leader. The seven offences with the gang leader, excluding the present C.R., are registered with Kashmiri Police Station. The Applicant Aftab Patel is arraigned as an accused in the following seven cases

registered with Kashmirira Police Station and which would reflect upon his criminal background.

Sr. No.	Police Station	CR No.	U/secs.	Name of Court	Court Case No.
1	Kashimira	I-230/2011	143, 147, 149, 447, 427, 323, 504, 506 IPC	JMFC	Court pending CC No.S-5925 of 2012
2	Kashimira	I-278/2-13	147, 148, 149, 436, 452, 323, 504, 506 IPC	----	Court Pending CC No.R-563 of 2017
3	Kashimira	I-292/2013	307, 504 34 IPC	----	29/09/2014
4	Kashimira	I-110/2014	326, 323, 143, 147, 148, 149, 342, 427, 504, 506 IPC	JMFC	Court Pending CC No.R-324 of 2016
5	Kashimira	I-334/2014	324, 147, 148, 149 IPC r/w 3, 25 Arms Act	----	Court Pending CC No.R-685 of 2017
6	Kashimira	II-28/2015	504, 506 IPC & 3(1)(x) of SC & ST Prevention of Atrocities Act.	JMFC	Court Pending RCC No.168 of 2017
7	Kashimira	I-277/2015	147, 148, 149, 447, 504, 506 IPC.	----	Court Pending CC No.R-341 of 2016

8. As far as Aftab Patel is concerned, it can be thus clearly seen that he is the assailant resulting in the life threatening injury to the Complainant and the material contained in the charge-sheet pinpoint his role in the attack by means of a sword. Three eye-witnesses have recorded their statements, which are compiled in the charge-sheet. His absence, which prompted the authorities to issue proclamation along with his criminal antecedents would justify his further incarceration and the

possibility of he absconding in future and not being available for trial cannot be overruled. His Application therefore deserves to be rejected.

9. As far as Applicant Shamim Patel is concerned, the injured Nasir Dastigir Sayyed and one Mohd. Kalid Ajgarali have given their statements, which have been recorded under Section 164 of the Cr.P.C. about the Applicant assaulting by means of wooden rod. The Applicant Shamim Patel was absconding and came to be arrested on 12/07/2018. She has five offences to her credit and she is the wife of gang leader Anjum Gulam Rasool Patel, who has formed an organized crime syndicate and 28 offences are registered against him. The Applicant Shamim Patel has four cases registered with Kashimira Police Station along with the gang leader and the details of which are as under:

Sr. No.	Police Station	CR No.	U/secs.	Name of Court	Court Case No.
1	Kashimira	I-110/2014	326, 323, 143, 147, 148, 149, 342, 427, 504, 506 IPC	JMFC	Court Pending CC No.R-324 of 2016
2	Kashimira	I-334/2014	324, 147, 148, 149 IPC r/w 3, 25 Arms Act	----	Court Pending CC No.R-685 of 2017
3	Kashimira	II-28/2015	504, 506 IPC & 3(1)(x) of SC & ST Prevention of Atrocities Act.	JMFC	Court Pending RCC No.168 of 2017
4	Kashimira	I-80/2016	307, 143, 144, 147, 148, 149, 326, 324, 323,	MCOC Court, Thane.	Court Pending Special Case No.5/2017

			114 of the IPC and 4, 25 (1b), (b) of the Arms Act read with 3(1)(ii), 3(2), 3(4) of the MCOCA.		
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10. Learned counsel arguing for Shamim Patel submits that the offences against his client are registered at the instance of her near relatives. I had asked learned A.P.P. to produce the documents pertaining to the said offences and it can be noted that, out of the four offences, two offences have been registered by the persons who are not relatives of the Applicant and this include the offences registered at Kashimira Police Station invoking Sections 323, 326, 143, 147, 148, 149, 504 and 506 and also another offence invoking Sections 504 and 506 read with Section 34 and Sections 3(1)(10) of the SC & ST (Prevention of Atrocities) Act. Further Shamim Patel has been arraigned as accused in C.R. No.140 of 2013, 110 of 2014 and 28 of 2015 along with the gang leader. The presence of Shamim Patel, wife of Anjum Gulam Rasool Patel at the time of the incident finds place in the supplementary statement of the Complainant and with her involvement along with the organized crime syndicate, the said Applicant does not deserve her liberty.

11. When being confronted with Aftab having 14 C.Rs. against him with 9 C.Rs. in common with the gang leader and Shamim

Patel having 4 C.Rs. in common with the gang leader, the submission is that the offences invoked are on account of the complaints filed by the family members. This cannot be accepted as an argument since it is not relevant as to who is the complainant in a crime of serious nature being invoked. Merely because the relatives are the informants, do not lesser gravity of the offences. Learned A.P.P. has produced before me, the FIR in all the cases registered against Aftab Patel and, perusal of the said C.Rs. would reveal that the alleged acts have been committed for economic gains and pecuniary advantage. In view of the ingredients of the MCOCA being made out against the gang leader and since it has come on record through the charge-sheet that both the Applicants are members of the said organized crime syndicate, which is engaged in continuing unlawful activities and which has resorted to violence, threat of violence, intimidation, coercion for obtaining pecuniary benefits and/or undue economic advantage, the Applicants, whose roles have surfaced on record through the charge-sheet, do not deserve their release on bail.

12. The Applications are therefore rejected.

[MRS. BHARATI DANGRE, J.]