

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2885 OF 2019

Santosh @ Bunty Fakira Salunkhe .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Prakash Shetty with Mr. Sarthak Shetty for the Applicant.

Ms. S.S. Kaushik, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 30TH APRIL, 2021.

P.C:-

1. By the present Application, the Applicant, who is charge-sheeted in C.R. No.591 of 2017 registered with Dehu Road Police Station, Pune, invoking offences punishable under Sections 307, 120-B, 324, 143, 147, 148 and 149 of the IPC and Section 3 read with Section 25 read with Section 27, 4 read with Section 25 read with Section 27 of the Arms Act and Sections 3(1)(ii), 3(4) of the MCOCA, seek his release on bail. The Applicant was arrested on 11/12/2017 and since then, he remains behind bars.

AJN

2. Mr. Shetty, learned counsel appearing for the Applicant states that the co-accused are released on bail and, even when the material in the charge-sheet is perused, no offence has been made out under Section 307 and at the most, the Applicant is assigned a role of chasing the Complainant being armed with a weapon in his hand but is not identified by the Complainant as an assailant. Claiming parity with the co-accused, the Applicant seeks his release on bail.

3. The complaint is filed on 02/11/2017 by one Hanumant Shinde by reporting to the police station about an incident dated 01/11/2017 when he received a phone call from one Aniket Raju Jadhav, who informed him that two of his acquaintance Vinod Gaikwad and Vicky Vasekar are at his residence and, therefore, he should come there so that the discord among them can be settled. On being told so, he accompanied his friends Sonu Sharma, Ganesh Puri, Yedya, Ganesh Shinde and others on his motorcycle towards Jadhav Vasti at about 10.00 p.m. On reaching there, he noted the presence of Aniket Jadhav and several named persons including the Applicant and 4 to 5 unknown persons. When he reached the spot, Aniket Jadhav yelled at the Complainant and shrieked that he shall not be left alive and the Complainant realized that he has been caught in a trap and, they would not leave him alive. By leaving their vehicles on the spot, the

Complainant and his friends rushed away from the spot. It is alleged that Aniket Jadhav fired at him from his pistol and his other friends, whom he named, armed with scythe and swords followed him. He named the Applicant to be one of those persons, who followed the Complainant. The Complainant stated that he was scared for his life and, therefore, ran helter skelter. When people assembled, the accused persons fled away from the spot. In the incident, Ganesh Shinde, however, sustained injury on his right arm and wrist. The complaint in respect of the incident is reported on 02/11/2017 and the Complainant states that since he was frightened and nervous, he went home and slept and reported about the incident on the next day.

4. Though the Complainant did not sustain any injury, Ganesh Shinde was referred for medical examination in the backdrop of the assault. On being examined at the hospital in Pimpri Chinchwad Municipal Corporation, on 19/11/2017, the injury certificate refer to blunt trauma to right shoulder - abrasion 3x1 cm. and abrasion over right forearm. Both the injuries are described as fresh/simple injuries.

5. In the very same offence, prior approval was sought from the Additional Director General of Police, Maharashtra State, Mumbai for invoking the provisions of MCOCA. On the

approval being granted, MCOCA came to be invoked. Pertinent to note that the Complainant did not sustain any injury but alleged that he was shot at by means of a pistol but there is no material reflecting that the firearm was shot. Ganesh Shinde has sustained simple injury. The Applicant is in any way not charged as an assailant but going by the version of the Complainant, he chased the Complainant and his friends being armed with weapons, however, Ganesh Shinde, who is injured, in his statement did not refer to the Applicant at all.

6. As far as the invocation of provisions of the MCOCA is concerned, I asked Ms. Kaushik, learned A.P.P. as to what is the commonality of the offences and on what basis the prosecution referred to him as member of the gang belonging to Vinod Gaikwad, the gang leader. Learned A.P.P. fairly conceded to the fact that though there are three offences attributed against the present Applicant as antecedents to rope him as a member of the gang, the said statement is incorrect and in fact, the Applicant is accused for the first time in the present C.R. and, she states that there is no positive material in the charge-sheet to implicate the Applicant as a member of the organized crime syndicate.

7. The co-accused Raju Shantaram Bansode has been granted bail by this court on 19/09/2019 (Criminal Bail Application No.574 of 2019), by recording that in the incident, the

Complainant has not sustained any injury and except Ganesh Shinde, no other person has been injured and even, Ganesh Shinde has sustained two simple injuries. The Applicant therein, without any antecedent came to be released on bail since investigation was complete and charge-sheet is filed. Similarly, the other co-accused Karan Ratan Rokade and Avishkar Rajkumar Salunkhe, Amol Gaikwad, Aniruddha @ Vicky Raju Jadhav are released on bail.

8. Learned A.P.P. has made a feeble attempt to place reliance on the confessional statement recorded under Section 18 but on perusal of the statement of one co-accused Nikhil Bagwat, it does not name the Applicant but only the reference is when the co-accused stated that in the offence of firing several persons were accused which included the present Applicant.

9. The said statement, however, do not inculcate the present Applicant in the offence. In the light of the aforesaid, there are reasonable grounds for believing that the Applicant is not guilty of offence, with which he is charged and since the investigation is complete and charge-sheet is filed, I am of the definite opinion that the Applicant deserves to be released on bail on the following terms and conditions.

ORDER

- (a) The Applicant – Santosh @ Bunty Fakira Salunkhe shall be released on bail in C.R. No.591 of 2017 registered with Dehu Road Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount. However, the Applicant is directed to be released on cash bail of Rs.25,000/- for a period of four weeks. On or before expiry of four weeks, he would execute the necessary P.R. Bond and arrange for one or two sureties of like amount. Failure to abide by the aforesaid direction would result in recalling of the present order.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall present himself before the Dehu Road Police Station, Dist. Pune on first Monday of every month between 10.00 a.m. and 12.00 noon and co-operate with the investigation.
- (d) The Applicants shall mark their attendance before the Sessions Court where the trial is pending once in two months and attend to the trial regularly when it

proceeds unless exempted by the Trial Court.

- (e) The Applicant shall provide his residential address and telephone number to the Investigating Officer.

10. The Application is allowed in the aforestated terms.

11. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]