

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

BAIL APPLICATION NO. 2978 OF 2019

Dilshad Mohammad Nadaf ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Rati Simhasane i/b. Mr. Umesh R. Mankapure, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATE : 7th JULY, 2021.

PER COURT:

1. This is an application for bail. The applicant is arrested on 11th November, 2015 in connection with C.R. No. 116 of 2015 registered with Sanjay Nagar Police Station, Dist. Sangli for offences under Sections 302, 212, 364, 364(a), 118, r/w Section 120(B) of Indian Penal Code (for short "IPC"). Subsequently, Sections 3(1)(i), 3(1)(ii), 3(2), 3(3), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC Act") were added.

2. The applicant had preferred an application for bail before this Court which has been rejected vide order dated 7th August, 2017. This is second application for bail before this Court.

3. Learned counsel for the applicant submits that there is change in circumstance to prefer this application. The previous application was rejected in 2017. There is no progress in the trial. Five co-accused were granted bail by the Special Court for MCOC Act, after the application for bail preferred by the applicant was rejected. The co-accused who were granted bail had played more serious role than the applicant. The applicant is in custody since last 4 ½ years. There are no criminal antecedents against the applicant. The affidavit-in-reply filed by the prosecution does not refer to any antecedents against her. She has been implicated only because she is the wife of one of the accused, who has been arrested in this case. The statement of Pradeep Bandgar relied upon by the prosecution was recorded on 24th December, 2015, although the incident had occurred on 10th November, 2015. The said statement only refers to the fact that there was conversation between the applicant and husband, who is one of the accused in this case. The statement does not indicate that the applicant has participated in offence in any manner. There is no cogent evidence to establish that the applicant has aided and abetted the co-accused in committing the crime. Merely providing sim cards would not attribute the role of participation in the crime.

4. Learned APP submitted that there is evidence against the applicant. Provisions of MCOC Act are invoked. Sim cards were provided by her. The evidence indicate that the applicant had knowledge that victim would be killed by her husband and others.

5. It is pertinent to note that, undisputedly it is not the case of the prosecution that the applicant was one of the assailant involved in the crime. She is the wife of co-accused Mohammad Nadaf. There are no criminal antecedents against her. Thus, She has not participated in any other crime along with gang leader. The case of the prosecution appears to be that she had provided some sim cards to her husband. After rejection of the application for bail preferred by the applicant vide order dated 7th August, 2017, five co-accused were granted bail. Accused No.6 Suraj @ Ibrahim Rahim Nadaf was granted bail by the Special Court vide order dated 22nd May, 2018. Role attributed to him was that the main accused Mohammad Nadaf had kept sickle prior to the incident in the house of the said accused which was later on used for killing the deceased. The said accused was knowing the fact that the sickle used in the crime was seized from the accused Mohammad Nadaf. The learned Special Judge granted him bail on the ground that no previous offence has been registered against accused for committing any offence.

and the question arises whether provisions of MCOC Act can be applied to him. Accused No.8 - Javed Nadaf was granted bail vide order date 7th April, 2018 passed by the Special Judge under MCOC Act. The role attributed to him was that when the police party had gone to arrest the main accused, he along with accused Mohammad Nadaf ran away by motorcycle and the said motorcycle has been seized in the present crime. The accused No.17 Sameer Nadaf was granted bail by the Special court vide order dated 7th April, 2018. The case of the prosecution against him was that, although he was knowing that accused No.1 had committed murder of the deceased, he gave shelter to him in his house and mobile handset was recovered from him. Accused No.18 Yakub Nadaf was also granted bail by the Special Court vide order dated 7th April, 2018. The case against him was that he had helped accused No.1 in securing room and during abscondence the accused had provided him car. Except the role as stated above, there is no other overt act attributed to the applicant. Apparently, there are no criminal antecedents against applicant. She is in custody for 4 ½ years. Hence, the restrictions under Section 21(4) of the MCOC act would not be impediment to grant bail to the applicant.

6. Hence, I pass the following order:

ORDER

- (i) Criminal Bail Application No. 2978 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 116 of 2015 registered with Sanjay Nagar Police Station, Dist. Sangli, on executing P.R. Bond in the sum of Rs.25,000/- 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) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)