

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3293 / 2019**

Vikas Shamsundar Choube

.....**Applicant**

V/s.

The State of Maharashtra

....**Respondent**

* * * *

Mr. Prashant Pandey a/w. Mr. Aiqan Memon with Mr. Bilal
Ahmed with Mr. Ashray Dave, advocate for the Applicant.
Mr. S.R. Agarkar, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 3rd March, 2021.

P.C. :

1. Applicant seeks his enlargement on bail in connection with Crime No.I-380/2015 dated 12th August, 2015 registered with Tulinj Police Station for the offences punishable under Sections 307, 324 read with Section 34 of the Indian Penal Code, Sections 3, 25 and 27 of the Arms Act and 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crimes Act ("MCOC Act" for short).

2. Complainant is Faizaan Subaan Ansari. Injured is Javed Ansari. Crime came to be registered on 12th August,

2015. Applicant was arrested on 4th November, 2015. Investigation is over and chargesheet has been filed. Pending investigation, on 29th January 2016, after seeking prior approval, offences under the MCOC Act, were registered. Till date, the charge has not been framed. As such, accused has been incarcerated for about five years.

3. Heard Mr. Pandey, learned Counsel for the applicant and Mr. Agarkar, learned Prosecutor for the State.

4. Perused the chargesheet and Affidavit of Amol Ashok Mandave, Assistant Commissioner of Police, Tulinj, Mira Bhayandar Vasai-Virar Police Commissionerate, District-Palghar.

5. On 12th August, 2015 Faizaan (complainant) reported that, applicant and his friends, Shailendra Mangilal Lodha @ Sheru (accused no.3) and Imran Hussain Khan (accused no.4) came at the scene of offence, whereafter, Imran Khan opened gunshots on Javed Ansari. It is alleged, in the

course of the incident, the applicant hit the complainant by bottles on his head. As such, on the information, the subject crime came to be registered. Thus, to be stated, the complainant alleged, gunshots were opened by Imran Khan and the role attributed to the applicant was that he hit the complainant on his head by bottles. But to say, no evidence of injury, is forthcoming. Be that as it may, investigation shows, the injured, Javed Ansari was admitted to IASIS Hospital on 12th August, 2015 by Anwar Khan. Later, Javed was admitted in Kokilaben Dhirubhai Ambani Hospital and discharged on 17th October, 2015. Injury Certificate shows that, he had suffered four gunshot injuries. Possibly, on 28th June 2015, his statement was recorded wherein he would allege that, applicant and Imran, both opened the fire on him. I have perused his statement wherein he would say that, after the assault, he fled the scene of offence and took shelter in the Society premises, wherefrom he informed the incident to P.I. Kalande attached to Tulinj Police Station. Thus, the incident narrated by the injured and complainant, Faizaan, give complete different account of occurrence, in as much as, the

complainant alleged the gunshots were opened by Imran, whereas, the injured said the applicant and Imran, both opened the gunshots. However, it may be stated that, the injured was removed to the hospital by one, Anwar Khan. Obviously, therefore it is to be inferred that, Anwar Khan had either reached the place of incident later or was present when the incident had taken place. However, neither the complainant nor the injured said anything about Anwar's presence, who had admitted the injured in the IASIS Hospital soon after the incident. Prima-facie, incompatibility in the statements of complainant and injured has not been explained by the prosecution, either by recording the statement of Anwar or otherwise. Additionally, it may be noted, complainant's supplementary statement was recorded on 25th December, 2015 i.e. nearly after four months, wherein he would say that, co-accused, Shailendra Lodha did not come alongwith Javed and applicant but it was mistaken identity. It is to be noted that, the complainant in the supplementary statement also did not say that the applicant had opened fire on Imran. More so,

alleged recovery of fire arms, does not further prosecution's case.

6. In the light of the facts of the case and in view of the available evidence, obvious incompatibility in the statements of witnesses renders the prosecution's case indefinite. So also, it has not been explained, how and when, Anwar reached the place of offence and he removed the injured to the Hospital. Admission papers show "unknown persons" opened gunshots. This again raises a doubt, in as much as, the State's Affidavit shows, applicant and injured were co-accused in one crime.

7. Admittedly, the applicant is in custody since 4th November, 2015 and till date, the charge has not been framed. Thus, in consideration of the facts disclosed in the Affidavit of the State and the material on record, rigors of Section 21(4) of the MCOC Act, would not impede this Court from releasing the applicant on bail.

8. The application is allowed and hence, the following order :

ORDER

(i). *The applicant arrested in Crime No.I-380/2015 dated 12th August, 2015 registered with Tulinj Police Station, shall be released on bail, on executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one/or more sureties in the like sum.*

(ii). *The applicant shall report to the Investigating Officer twice a month i.e. second and fourth Monday of each month, commencing from March, 2021 between 11:00 to 1:00 p.m. till the charge is framed and co-operate in the investigation.*

(iii). *The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.*

(iv). *The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.*

9. The application is accordingly allowed and disposed off.

10. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

Neeta
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Sawant

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Neeta S.
Sawant
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