

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

BAIL APPLICATION NO.2231 OF 2021

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Julfikar A. Jafrey

...Applicant

Vs

The State of Maharashtra

...Respondent

...

Ms. Dhanashree M. Lad with Mr. Abdul Aziz Khan for the Applicant.

Smt. Sharmila Kaushik, APP for the Respondent-State.

API Pradeep Sarfare, Shil-Daighar P.Stn. Thane present.

CORAM : SANDEEP K. SHINDE J.
DATE : FEBRUARY 10, 2022.
(Through Video Conferencing)

P.C. :

Heard learned counsel for the Parties.

2 Prosecution case in brief is, that, Complainant was robbed of his mobile by a unknown pillion rider on 5th October, 2018. Incident was reported only, on 9th October, 2018. Whereafter, Crime No.I-174 of 2018 came to be registered, against two unknown persons. On 22nd October, 2018, witness, Shahrukh told police, post incident, he had seen, while Rehan Kazi (accused no.3) handing over

mobile phone to accused no.1-Mustafa Shaikh (Gang leader) and at the relevant time, applicant and co-accused Arbaj Ziauddin Shaikh, were seen by him in the company of Rehan Kazi and gang-leader-Mustafa Shaikh. Afterwhich, Rehan Kazi (accused no.3) was arrested on 10th October, 2018 and on 12th December, his statement under Section 18 of the Maharashtra Control of Organized Crimes Act ('MCOCA Act' for short) came to be recorded. Rehan Kazi, would state the applicant is member of crime syndicate, headed by accused no.1-Mustafa Shaikh was active in snatching mobiles, for pecuniary gains. Whereafter, applicant came to be arrested on 15th March, 2019. However, Rehan Kazi (accused no.3) retracted the confession on 26th June, 2019.

3 It appears that in the crime in question i.e. C.R.No.174 of 2018, no overt act has been attributed to the applicant. The final report suggest, that applicant has been arraigned in the, crime being a member of crime syndicate, after approval. It may be noted that co-accused Arbaj Shaikh, who was allegedly seen in the company of Rehan Kazi (accused no.3) and gang leader, soon after the alleged

incident of mobile snatching, has been granted bail by this Court on 1st September, 2021 in Bail Application No.3403 of 2019. The role attributed to Arbaj Shaikh and to the applicant is similar or rather identical.

4 Upon perusing the final report, it appears that prosecution relies on confessional statement of Rehan dated 12th December, 2018; however, except that there is no other material to corroborate the allegations, to say that applicant is member of Crime Syndicate. Even otherwise, Rehan has retracted confessional statement. It would be apposite, to note that while releasing co-accused on bail, the Co-ordinate Bench, has observed in the order that, Rehan volunteered to record his confession on the promise that he would be granted pardon. Thus, having taken overview, of the matter, a case is made out, for releasing the applicant on bail. Although, the prosecution would rely on the affidavit of the Investigating Officer and the crime chart appended thereto, in my view, although applicant has been arraigned as co-accused in two offences registered in the year 2018 with Mustafa Shaikh (gang

leader), that itself is not sufficient to continue his detention in the crime in question. The investigation is over. Applicant is in custody since 2019. In consideration of the facts of the case, embargo under Section 21(4) of the MCOC Act would not come into play and there would not be any hinderance in granting bail to the applicant. Hence, following order:

ORDER

- (i) Applicant in Crime No.I-174 of 2018 registered with Shil Daighar Police Station, shall be released on executing PR bond for the sum of Rs.25,000/- with one or more sureties in like sum.
- (ii) Applicant shall report to concerned police station twice a month, i.e., 2nd and 4th Monday of every month between 11 a.m. to 1 noon commencing from March, 2022 till the charge is framed.
- (iii) He shall furnish particulars of his address, mobile details to the Investigating Officer soon after his release from the custody.
- (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

5 The application is accordingly allowed and disposed of.

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

(SANDEEP K. SHINDE, J.)