

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

CRIMINAL BAIL APPLICATION NO. 4476 OF 2021

Sohel Anis Pathan ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Mr. Aniket Nikam i/by Mr. Vivek N.Arote, Advocate for the Applicant.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th OCTOBER, 2022.

PER COURT:

1. This is an application for bail in connection with C.R.No.19 of 2019, registered with Wanawadi Police Station, Pune, for the offences punishable under Sections 307, 120-B, 201, 143, 144, 147, 148, 149 and 506(II) of Indian Penal Code (“IPC”, for short) and under Section 37(1) read with 135 of Maharashtra Police Act as well as Sections 3, 4(25) of Arms Act. Subsequently, provisions of Section 3(1)(ii), 3(2) of the Maharashtra Control of Organized Crime Act (for short “MCOC Act”) were invoked. First Information Report (for short “FIR”) was lodged on 5th January 2019 by Nilesh Ginavat.

2. The prosecution case is that, the informant is resident of

Kanjarbhat Wasti and his family is in construction business. On 4th January, 2019, the informant learnt that some of the residents of Kanjarbhat Wasti/relatives of the informant were assaulted by accused Tipu Pathan, Nadeem Khan and others. It was learnt that the person from the Kanjarbhat Wasti are proceeding towards his place with weapons. On 5th January, 2019, the accused came near the residence of the complainant. They were armed with weapons. The complainant had brought his sister and her family to his house for safety reasons. The accused assaulted the complainant in front of his house. Accused Tipu Pathan has raised pistol and threatened the people. The complainant managed to run inside his house. With a view to avoid any damages being caused to his vehicle Land-Rover, he decided to keep the vehicle in the house of his neighbour for safe custody. While he was proceeding by his vehicle, the accused who were in large number chased him, and they attacked the vehicle of the complainant. The co-accused, Tipu Pathan is brother of the applicant. He was amongst them. He fired at the vehicle. The complainant managed to reach Hadapsar Police station and lodged FIR. It is further alleged that the main accused are conducting the security agency. One Bahadur Singh was working with the said agency. He had a licensed pistol. Since he was proceeding to his native place, he had handed over the said weapon

(Pistol) to his co-employee. The said co-employee handed over the same to the applicant. Applicant told him to hand over the weapon to his brother Tipu Pathan. It is alleged that the same weapon was used by Tipu Pathan in commission for the aforesaid crime. There are several cases registered against Tipu Pathan, running a crime syndicate and approval is sought for invoking the provisions of MCOC Act. Approval was granted. Investigation proceeded. Charge-sheet was fled. Several accused were arrested. The applicant was arrested on 5th January, 2019. On completing investigation, charge-sheet was fled.

3. Learned Advocate for Applicant submitted that, there is no evidence to show the involvement of applicant in the crime. Although it is alleged that the applicant is a part of unlawful assembly and he was holding sword in his hand, no role of assault is attributed to him. There is no recovery of sword at the behest of Applicant. No role of chasing the complainant is attributed to the Applicant. The complainant and the eye witness Sunil Salve did not identify the Applicant in the test identification parade. Witness Aakash Binawat has identified the Applicant in the test identification parade. However, other accused, who was identify in the parade have been released on bail. None of the witnesses whose statements were recorded in-camera has named the

Applicant as associate of gang leader. Co-accused Matin Sayyad, Ejaj Patel, Ubed Khan, Imtiyaz Pathan, Ejaz Pathan, who were named in the in-camera statements as associates of gang leader and the co-accused. Co-accused Tanvir Shaikh, Ejaj Patel and Imtiyaz Pathan, whose names surfaced in the conversation have been granted bail. The entire conversation is between the gang leader and Ejaj Patel. There is no recovery of any article from the applicant. The applicant is in custody for a period of about 3 years and 5 months. One previous case is pending against the applicant. This Court has granted bail to Imtiyaz Khwaja Pathan vide order dated 29.11.2021 and Ajaj Sattar Pathan vide order dated 20.02.2020. Matin Sayyad, Tanvir Shaikh, Ejaj Patel were granted bail by the Sessions Court. The applicant was allegedly seen in the C.C.T.V. footage. However, the prime witness i.e. complainant's son identified the applicant.

4. Learned A.P.P. submitted that, the applicant and the gang leader had created terror in the locality. The offence is of serious nature. The group of accused including the applicant were armed with weapons and by wielding them they had created atmosphere of terror. The accused chased the complainant. One of them had fired at the complainant. The provisions of MCOC Act were invoked against the accused. The applicant is involved in C.R.

No.113 of 2018 registered with Pachgani Police Station, Satara for offences under Sections 384 and 324 of IPC. The applicant driving the motorcycle used in committing the crime. It was confiscated from the witness. One of the witness had identified the applicant in the test identification parade. The gang leader Tipu Pathan is involved in 9 cases. In view of restrictions under Section 21(4) of the MCOC Act, bail should not be granted to the applicant.

5. The applicant was allegedly part of the group of accused, who had created terror in the locality. The applicant was allegedly armed with sword. The prosecution case is mainly based on the version of complainant. He was allegedly chased by some of the accused and one of them had fired at the complainant. However, the complainant has not identified the applicant in the test identification parade. Other persons were granted bail. Some of them were attributed most serious overt act than the applicant. Matin Hakim Sayyad, Tanvir Shakil Shaikh and Ejaj Yusuf Inamadar Patel, Ajaj Sattar Pathan, Imtiyaj Khawja Pathan were granted bail by this Court. There is no evidence on record attributing any role of assault to the accused. Although it is alleged that the applicant was armed with sword, there is no recovery of sword from him. The accused who are referred to in the conversation between the gang leader and Ezaj Patel were granted bail. The applicant is entitled

for bail on the ground of parity.

6. The applicant is not referred to by the witnesses whose statements were recorded in-camera with regards to unlawful activities by the gang. There is no evidence to show that, the applicant is continuously involved in committing the crime along with gang leader. The restrictions under Section 21(4) of the MCOC Act, will not deprive the applicant from grant of bail in view of factual aspects as stated above.

ORDER

- i. Criminal Bail Application No. 4476 of 2021 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.19 of 2019 registered with Wanawadi Police Station, Pune on executing P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.50,000/- for a period of eight weeks in lieu of surety.
- iv. The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- v. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)