

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.277 OF 2023
WITH
CRIMINAL APPLICATION NO.817 OF 2023

- 1 Mohammad Rizwan s/o Mohammad Rafiq,
Age 29 yrs., Occ. Education,
R/o Hamid Colony, Dargah Road,
Parbhani, Tq. & Dist. Parbhani.
- 2 Abu Ali Chaus w/o Amjad Chaus,
Age 27 yrs., Occ. Education/Business,
R/o Kurbalisha Nagar, Dargah Road,
Parbhani, Tq. & Dist. Parbhani.

... Applicants

... **Versus** ...

The State of Maharashtra
Through Kotwali Police Station,
Tq. & Dist. Parbhani.

... Respondent

...

Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R. Sapkal, Advocate for applicants

Mr. A.M. Phule, APP for respondent

Mr. S.R. Pande, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 17th MARCH, 2023

PRONOUNCED ON : 07th JUNE, 2023

ORDER :

1 Criminal Application No.817 of 2023 filed for assist to PP stands allowed and disposed of.

2 Bail Application No.277 of 2023 is the second bail application of both the applicants. Their earlier bail applications came to be rejected by this Court on 07.06.2022. Both the applications have been filed after charge sheet is filed and after they have been discharged from the offence under the Maharashtra Police of Organized Crime Act, 1999 (hereinafter referred to as “MCOC Act”). The applicants are the original accused Nos.1 and 2 in Crime No.139/2021 registered with Kotwali Police Station, Tq. & Dist. Parbhani, for the offence punishable under Section 307, 324, 109, 143, 147, 148, 149 of the Indian Penal Code, 1860, under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and under Section 37(1), 37(3), 135 of the Maharashtra Police Act, 1951.

3 Heard learned Senior Counsel Mr. V.D. Sapkal instructed by learned Advocate Mr. S.R. Sapkal for the applicants and learned APP Mr. A.M. Phule well assisted by learned Advocate Mr. S.R. Pande.

4 It has been vehemently submitted by learned Senior Counsel that though initially the offence was not registered under MCOC Act; yet, at the later stage Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act came to be added. The charge sheet has been filed on 20.12.2021 and the bail applications filed by the applicants i.e. Bail Application Nos.283 of 2022 and 284 of 2022 respectively came to be rejected by this Court on 07.06.2022. However, the Division Bench of this Court, where the sanction for MCOC Act was challenged in Criminal Writ Petition No.1070 of 2021, passed an order on 08.06.2022 permitting the petitioners to file application for discharge before the learned Special Judge under the MCOC Act. Accordingly, applications Exhs.50 and 51 were preferred in Special Case No.154 of 2021 and they came to be allowed. The applicants stood discharged under Section 227 of the Code of Criminal Procedure from the said offences under the MCOC Act. Therefore, now only the offences under the provisions of IPC as well as Maharashtra Police Act and Indian Arms Act are remaining. Therefore, again the applicants had filed applications under Section 439 of the Code of Criminal Procedure before the learned Special Judge, however, those applications came to be rejected. Hence, the present application.

5 The learned Senior Counsel instructed by learned Advocate Mr. S.R. Sapkal further submitted on behalf of the applicants that if we peruse

the entire charge sheet, it would reveal that in all three crimes came to be registered. First was Crime No.139/2021 on 25.06.2021 at 02.07 hours i.e. the present offence, under which the applicants have been arrested. Prior to that First Information Report vide Crime No.138/2021 came to be registered at 00.30 hours on 25.06.2021 and it was for the offence under Section 279, 337, 427 read with Section 34 of the Indian Penal Code and under Section 4, 7 punishable under Section 25 of the Indian Arms Act at the behest of one Shaikh Ismail Shaikh Yunus and it was against Shaikh Imran Shaikh Amir and Shaikh Salim Shaikh Amir. This Shaikh Salim is the informant in Crime No.139/2021. The third First Information Report vide Crime No.147/2021 came to be registered at 12.30 hours on 04.07.2021, which was by the Rizwan Khan s/o Sharif Khan. In the present First Information Report there is total suppression of the fact that Shaikh Imran made a plan to attack applicant No.1 Mohd. Rizwan for no reasons, he had fired the rounds of pistol. Taking into consideration the spot, where the incident had taken place i.e. in front of the house of the present applicant No.1, it can be certainly said that the informant and co-accused in Crime No.147/2021 are the aggressors. Definitely, when the firing was done from the pistol, the applicant had every right i.e. his right to private defence, in which he caused injuries to Imran and this fact and aspect was not considered by this Court when the earlier application was rejected. The applicants are in jail since 11.12.2021 and

04.07.2021 respectively. The entire investigation is complete, charge sheet is filed long back, they have been discharged from the offence under MCOC Act and even as per the prosecution story, the applicant No.1 has assaulted the injured Imran by taking sword from assailant Rizwan Khan and then Mohd Rafiq has thrown the stone towards Imran. Medical evidence will not support throwing of stones and causing thereby injuries. The applicants are ready to abide by the terms of the bail.

6 Per contra, the learned APP strongly opposed the application and submitted that this Court has elaborately dealt with the facts of the case, of course, at that time the MCOC Act was not made applicable to the facts of the case and later the applicants have been discharged by the Special Court from the MCOC offences on 01.11.2022. Even as regards the other offences are concerned, there is strong evidence. The applicants have assaulted Imran with knife and sword, it cannot be in defence or as a right to private defence. There are five witnesses who have seen the incident and their statements have recorded. With the criminal antecedents of the applicants certainly there is threat to life to the witnesses and if the applicants are released on bail, it will cause injustice not only to the informant but to the witnesses also.

7 At the outset, it is to be noted that when this Court had rejected

the earlier applications, at that time the MCOCA offences were still made applicable or in other words the offence was still registered under those provisions. However, this Court had also considered the other evidence while rejecting the said applications. Even at that time the charge sheet was before this Court and all those points which the learned Senior Counsel is now raising could have been definitely raised on behalf of applicants at that time. Change of Advocate or counsel will not make any difference when it comes to the submissions, those are required to be made. Perusal of the earlier order would show that even the submissions on behalf of right of private defence was raised and it was based on the cross complaint i.e. the belated First Information Report bearing Crime No.147/2021 filed by Rizwan Khan. This Court had made observations that since it is belated i.e. after Rizwan Khan was arrested by police, it came to be lodged, no advantage can be given at this stage. The active participation of the applicants in the crime as was revealed from the charge sheet was considered by this Court. This Court has also taken a note of the fact that First Information Report vide Crime No.139/2021 has been lodged promptly on 25.06.2021 at about 02.07 hours in respect of incident that had occurred at about 14.45 hours on 24.06.2021. In the First Information Report specific role has been attributed to the applicants. It is stated that applicant Mohd. Rizwan @ M.R. had come running in front of the house of one Syed Moulana where the informant

Shaikh Salim and the injured Imran had stopped. It is then stated that Imran was supposed to receive a phone call, at that point of time. Accused Mohd. Rizwan @ M.R. started saying that Imran had chased Ali Chaus. He caused Imran to lie down on the ground and at that time accused Ali Chaus and Rizwan Khan Shafik Khan came running. Ali Chous was holding knife and Rizwan Khan was holding sword. Mohd. Rizwan then took the sword from the hands of Rizwan Khan and gave blows on Imran. At that time, Mohd. Rizwan's father came there and he threw stones towards Imran. Informant had then ran away from the spot and called Imran's brother. It is then stated that after certain persons came there the assailants fled away. Thus, unless Rizwan Khan would not have provided sword to Mohd. Rizwan; Mohd. Rizwan would not have used the same. These facts have been supported by five independent eye witnesses including the injured. Further, the MLC would show that there were 8 injuries on the person of Imran, out of which six injuries were grievous and were possible by sharp and pointed object, whereas two injuries were simple. There was also a fracture to his tibia fibula.

8 Another fact to be noted here is that the discovery of weapon is at the instance of Mohd. Rizwan and accused Abu Ali Chaus. Their clothes are stated to be blood stained. If we consider the list of the offences, then,

accused Rizwan Khan Shafik Khan is involved in about six offences including the present one. There are other two cases under Section 307 of the Indian Penal Code with other sections. Accused Mohd. Rizwan is involved in four cases including the present one, but he is acquitted from one of the offences. Now, in the present case he is the main person who has assaulted Imran with sword. With this kind of evidence available against the accused persons this does not appear to be the fit case where, even after dropping of the charges under MCOC Act, they deserve to be released on bail. Hence, following order.

ORDER

- 1 Bail Application No.277 of 2023 stands rejected.
- 2 Criminal Application No.817 of 2023 stands disposed of.

(Smt. Vibha Kankanwadi, J.)