

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

BAIL APPLICATION NO. 311 OF 2022

Mukhtar Sheru Hussain ..Applicant
VS.
The State of Maharashtra ..Respondent

Adv. Moorthy Acharya for the Applicant.

Mr. S. V. Gavand, APP for the State.

PSI – N.B. Kavade, Crime Branch, Unit – 3, Kalyan

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 14, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail by the applicant- Mukhtar Sheru Hussain, in connection with C.R. No.I-21 of 2016 dated 13/01/2016, registered with Manpada Police Station, under sections 394 and 34 of the Indian Penal Code, 1860 and sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.
- 3.** So far as the present applicant is concerned, the following material against him is reflected from the affidavit affirmed on 17/10/2022, which was filed by the Shri Sardar

N. Patil, Assistant Commissioner of Police:

“12. I say that the main role of the present Applicant is that he is one of the members of the gang which is headed by Mohammad @ Aandu Afsar Sayyed and the said gang. I further say that during the course of investigation, it revealed that the investigating agency seized old number plates of the motorcycle which was used in the aforesaid crime from the present Applicant u/s.27 of the Indian Evidence Act. Apart from that during the course of investigation, the investigating agency recorded confessional statement of co-accused Gazi Dara Jafri who disclosed how the present Applicant is involved in commission of the aforesaid crime and how he was working for the aforesaid gang. During the course of investigating, it revealed that the present Applicant/Accused is member of organized crime syndicate and he used to steal motorcycles and provide the same to other accused persons for chain snatching which prima facie shows that the present Applicant/Accused is actively participated in the commission of aforesaid crime. Prima facie it revealed that the present Applicant/Accused who is one of the members of the aforesaid gang obtained monetary benefit from the organized crime syndicate and committed aforesaid offence.”

4. The co-accused - Aliya @ Ali Afasar Sayyad, having a similar role as that of the present applicant has been released on bail vide order dated 20/07/2022 in Bail Application No. 2465 of 2021. The paragraph nos. 6 to 9 of the order read thus:

“6. There is no incriminating material against the applicant in the charge-sheet and though the learned APP allege that there is recovery of number plate of the motorcycle used in the crime, the same is not mentioned in the affidavit.

7. The implication of the present applicant is only on the basis of the statement of co-accused. It is not the case of the prosecution that he was present on the spot when the crime took place. Only the basis of that, there are offences of similar nature pending against him he has been chargesheeted under the provisions of MCOC Act.

8. Perusal of the order passed by this Court on 25.08.2021, in similar circumstance while releasing the co-accused Mohammed @ Mammu @ Saga Sayyed Mohammed Jakir Sayyad, in absence of any evidence against him in the charge-sheet connecting in the organized crime. In any case, the Court has held that the gang leader himself has released on bail in the lack of evidence in the MCOC case. The confession statement of co-accused is not sufficient evidence at this stage to keep him in incarceration. I am, therefore, convinced with the order dated 25.08.2021, must be conferred on the Applicant No.2 and he is entitled to be released on bail.

9. Considering the nature of evidence and the facts of this case, the applicant deserves his release on bail, in spite of restrictions under Section 21(4) of MCOC Act."

5. It is not in dispute that the gang leader - Mohammed @ Mammu @ Sanga Sayyed Mohammed Jakir Sayyad has been released on bail. The said fact has been reflected in the order dated 20/07/2022 in Bail Application No. 2465 of 2021.

6. The applicant was arrested on 29/02/2016 and is in custody almost for 7 years, as the trial has not commenced and even the charge has not yet been framed. On the ground of long incarceration as well as parity, the applicant

could be released on bail. Hence, the following order.

ORDER

(a) Applicant- Mukhtar Sheru Hussain, in connection with C.R. No.I-21 of 2016, registered with Manpada Police Station, shall be released on bail, on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount;

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence;

(c) The applicant shall make himself available as and when required by the Investigating Officer.

7. The application is disposed of.

(M. S. KARNIK, J.)