



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

BAIL APPLICATION NO.743 OF 2023

MAKSOOD AHMAD NIHAL AHMAD

@ MATSE

VS.

THE STATE OF MAHARASHTRA

..APPLICANT

..RESPONDENT

Adv. Subir Sarkar for the applicant.

Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 29, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 302, 397, 120-B, 201, 109, 504, 506 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) read with 3, 25 and 5, 27 of the Arms Act, registered vide C.R. No.104/2021 with Pawar Wadi Police Station, Malegaon.

3. There are in all eight accused. The applicant is accused no.4. So far as the present offence is concerned,

the applicant did not play an active role in the commission of the crime. The applicant was driving a motorcycle. However, so far as the accused no.3 is concerned who is alleged to have fired a shot from the pistol has been granted bail by this Court by an order dated 7/1/2023 in Criminal Bail Application No.2127/2022, which reads thus:

“This is an application under Section 439 of the Code of Criminal Procedure for bail.

2. The applicant came to be arrested in Crime No. 104 of 2021 registered at Pawar Wadi police station for the offences punishable under Sections 302, 397, 120B, 201, 109, 504, 506 read with 34 of the Indian Penal Code and 3/25 and 5/27 of the Arms Act.

3. The incident took place in the intervening night of 7 July 2021 and 8 July 2021. According to the prosecution, on 7 July 2021, at about 10:45 p.m., the complainant and his relatives including the deceased had purchased about 45 goats from goat market in Jalgaon. They loaded the said goats in pick-up jeep and started coming to Kalyan. According to the prosecution, at about 3:35 a.m. while they were near Chalisgaon on Mumbai-Agra Highway, the present applicant and other co-accused with a view to rob them started chasing them on motorcycle and at that time, one of the co-accused was armed with pistol. It is alleged that the present applicant and other co-accused had asked them to stop their vehicle. However, as they did not stop the vehicle, one of the co-accused had fired at them. The bullet hit the deceased and he died due to bullet injury.

4. I have heard the learned counsel for the applicant and the

learned APP for the respondent-State.

5. The report was lodged against the unknown persons. The present applicant was arrested on 12 July 2021. The test identification parade was however, conducted on 13 September 2021, i.e., after two months.

6. Apart from it, in the first round the complainant has not identified the present applicant and identified the other co-accused- Mohammad Sabir only. It however, appears that in a second round the complainant has identified the present applicant.

7. The learned APP submits that the Investigating Officer has submitted the proposal to the competent authority for grant of approval to invoke the offence punishable under MCOC Act. The learned APP has, however, submitted that the name of the present applicant is not there in the said proposal.

7. Considering the overall facts and circumstances of the case and as there are no other criminal antecedents, I am inclined to release the applicant on bail. Hence, the following order is passed:

(i) Application is allowed.

(ii) The applicant be released on bail in Crime No. 104 of 2021 registered at Pawarwadi police station for the offences punishable under Sections 302, 397, 120B, 201, 109, 504, 506 read with 34 of the Indian Penal Code and 3/25 and 5/27 of the Arms Act on furnishing PR bond in the sum of Rs. 25,000/- with one or two sureties in the like amount."

4. A country-made pistol is recovered at the instance of the applicant. The applicant was identified in first round but not in the second round which was immediately conducted.

There are no criminal antecedents reported against the applicant. The offence under Maharashtra Control of Organised Crime Act, 1999 ('MCOCA') is invoked against other accused but not against the applicant.

5. I have gone through the affidavit filed by learned APP. Learned APP invited my attention to the contentions taken therein while opposing the application for bail.

6. The applicant was arrested on 12/7/2021 and is in custody for almost two years. The trial is likely to take a long time to conclude. Considering that the accused no.3 has been enlarged on bail, in the facts and circumstances of the present case, even the present applicant can be enlarged on bail. The investigation is complete. The charge-sheet has been filed. In my opinion, the applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

(a) The application is allowed.

(b) The applicant- Maksood Ahmad Nihal Ahmad @ Matse in connection with C.R. No.104/2021 with Pawar Wadi Police Station, Malegaon, shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like

amount.

(c) The applicant shall attend the Investigating Officer of Pawar Wadi Police Station, Malegaon, once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.

(d) 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.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

7. The application is disposed of.

(M. S. KARNIK, J.)