

SA Pathan

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

BAIL APPLICATION NO.1277 OF 2022

Asif Allahbaksha Shaikh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Harshwardhan Akolkar, for the Applicant.

Mr. Pandurang H. Gaikwad, APP for State-Respondent.

Mr. Harish Shilamkar, API, Kondhwa police station,
Pune City.

CORAM : AMIT BORKAR, J.

DATED : JULY 12, 2023

P.C.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.PC.') in connection with C.R. No.1095 of 2020 registered with Kondhwa police station for offences punishable under Sections 397, 395, r/w 34 of the Indian Penal Code (for short 'IPC') and under Section 4(25) of the Arms Act, under Section 37(1) (3) 135 of the Maharashtra Police Act and under Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (for short 'MCOC Act').

2. According to prosecution, the applicant has member of crime syndicate consisting of gang leader Suresh Dayalu and Chand Shaikh along with others assaulted the informant on 19 October 2020 at about 5:45 pm while he was proceeding on his splinder motorcycle towards his shop. At about 6 pm accused persons

caught the informant at Kanha Hotel Chowk. They abused, threatened and manhandled him, demanded money and when the informant requested them to let him go, he was forcibly assaulted by means of sickle and chopper. The accused persons took away the cash amount and wallet from his pocket forcibly.

3. According to prosecution, the applicant caught hold of informant while other accused assaulted him. On the same day of incident, the applicant and other accused were arrested by police from Bharati Vidyapeeth police station with weapons and report under Section 399 of IPC was lodged against them. The applicant was arrested on 27 October 2020.

4. Learned Advocate for the applicant submitted that except confessional statement of gang leader and the applicant under Section 18 of MCOC Act, there is no other credible material that the applicant with the alleged crime has no antecedents. Except offence registered under Section 399 of IPC, the incident which allegedly occurred after the present incident. He is in jail since 27 October 2020. The Special Judge, under MCOC Act, Pune by order dated 30 August 2021 rejected the application under Section 439 of Cr.P.C. He has been released on bail for offence registered under Section 399 of IPC. He, therefore, prayed for relief under Section 439 of Cr.P.C.

5. Learned APP submitted that apart from confessional statement of applicant, statement of eye-witnesses indicate presence of applicant at the time of incident. All three witnesses have stated that the applicant fled along with other four co-accused immediately after the incident. Moreover, CDR placed on

record, indicate calls between gang leader and applicant immediately before the incident. The location of applicant and other co-accused at the time of incident corroborates prosecution's case. He, therefore, submitted that the applicant is not entitled for relief.

6. On perusal of charge-sheet and affidavit-in-reply filed by the investigating agency, it appears that the applicant in his confessional statement under Section 18 of MCOC Act stated that he caught hold the informant while other co-accused assaulted him. Confessional statement of gang leader indicates that he called the applicant immediately before the incident. The said statement is corroborated with CDR which indicate calls between the gang leader and the applicant immediately before the incident.

7. Apart from aforesaid material, three eye-witnesses have seen the applicant at the place of incident fleeing immediately after the incident along with co-accused. The aforesaid material prima facie indicates nexus of applicant with the organized crime syndicate. The affidavit-in-reply by investigating agency indicates seven crimes allegedly committed by a gang members either singly or jointly. Therefore, in my opinion, the applicant is not entitled for relief under Section 439 of Cr.P.C. The bail application is, therefore, rejected. No costs.

8. Considering the facts of the case, the Trial Court shall endeavor to decide the trial as expeditiously as possible.

(AMIT BORKAR, J.)