

SA Pathan

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

BAIL APPLICATION NO.2078 OF 2022

Musab @ Musa Ilahi Shaikh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Shubhangi Parulekar, for Applicant.

Mrs. Rutuja Ambekar, APP for the State – Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 5, 2023

PC.:

1. This is an Application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.PC') in connection with CR No.50 of 2021 registered with the respondent police station for offences punishable under Sections 395, 412, 294(B), 109, 506(2) of the Indian Penal Code (for short 'IPC') and under Section 3, 4(25) of the Arms Act and under Section 3(1) (ii), 3(4) of the Maharashtra Control of Organized Crimes Act (for short 'MCOC').

2. The gist of the prosecution case is as under:

The First Information Report (for short 'F.I.R') came to be registered against the Applicant and others for offences punishable under Sections 395, 412, 294(B), 109, 506(2) of IPC and under Sections 3, 4(25) of the Arms Act and under Sections 3(1) (ii), 3(4) of MCOC Act, alleging that on 9th September, 2019, co-accused approached to the informant for hand loan of Rs.40,000/-

and towards security of the borrowed loan amount, he kept a jeep of Mahindra 550 Model bearing registration No.MH12-JU-7344 with the co-accused. It is further alleged that on 10th September, 2019, the present Applicant along with other co-accused forcibly took away the vehicle under the threat of chopper. According to the informant the incident was recorded in the CCTV footage of the housing society. On the next day of incident, the co-accused made threatening call to the witness.

3. The report against the Applicant and others was lodged after two years. The Applicant came to be arrested on 25th February, 2021. The investigation is completed and charge-sheet has been filed.

4. On 13th November, 2021, the investigating officer recorded supplementary statement of complainant which disowns the incident.

5. Considering the pendency of offences against the accused No.1, the investigating officer made a proposal for the sanction under Section 23(1) and 23(2) of the MCOC Act, and accordingly on 6th March, 2021, the competent authority granted a sanction. On 23rd June, 2022 the Special Court under MCOC Act, Pune rejected application, seeking bail. The Applicant has, therefore, filed present Application under Section 439 of the Cr. PC.

6. The learned Advocate for the Applicant submitted that the co-ordinate Bench of this Court has released the alleged gang leader in connection with same CR No.50 of 2021, registered at Kothrud Police Station, Pune. She submitted that other four co-

accused have been released by the Sessions Court on bail. The CCTV footage was significant importance considering allegations in the F.I.R.has not been recovered. There is no material available with the investigating agency which indicates involvement of Applicant in offences alleged against him.

7. Per contra, learned APP submitted that considering the gravity and seriousness of the offence, the Application is to be rejected. She accepts that, despite of CCTV footage mentioned in the initial stage of the investigation has not been recovered.

8. Having considered the material on record, following factual scenario prima facie emerges:

- i. The CCTV referred in the report and the statement of the informant has not been recovered.
- ii. The gang leader has been released on bail by co-ordinate Bench of this Court in the Criminal Bail Application No.29 of 2022.
- iii. The other four co-accused have also been released by the Sessions Judge in connection with the same F.I.R.
- iv. On 13th November, 2021, the informant has disowned the incident.

9. The aforesaid factors prima facie indicate that the Applicant has made out the case for his release on bail. As the prima facie there is absence of sufficient material to implicate the Applicant. The prima facie Application of provision of MCOC Act in the absence of material to satisfy the ingredients of offences under the

said Application would not detain this Court from releasing the Applicant on bail. Hence, I pass the following order:

ORDER

- i. The Application is allowed.
 - ii. The respondent – Kothrud police station, Pune is directed to be released Applicant in CR No.50 of 2021 registered at Kothrud police station, Pune for offences punishable under Sections 395, 412, 294(B), 109, 506(2) of IPC and under Sections 3, 4(25) of the Arms Act and under Sections 3(1) (ii), 3(4) of MCOC Act, on executing PR bond in the sum of Rs.1,00,000/- (Rs. One Lakh only) with one or two solvent surety in the like amount.
 - iii. The Applicant shall report to the investigating officer twice in a month i.e. on 2nd and 4th Tuesday between 11:00 am to 1:00 pm till framing of the charge and thereafter as and when his presence is required by the Court.
 - iv. The Applicant shall deposit his pass-port with investigating officer within three (3) weeks from the date of his release from jail.
 - v. The Applicant shall not tamper with the evidence of the prosecution and shall not influence the witnesses.
10. The Bail Application stands disposed of.

(AMIT BORKAR, J.)