

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (BA) NO. 1121/2022

Sheikh Hajibaba s/o Sheikh Sarvar vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Anil Mardikar, Senior Advocate assisted by Mr.
N.B.Jawade, Advocate for applicant.
Mr. P.K. Sathianathan, Special PP for respondent/State.

CORAM : ANIL L. PANSARE J.

DATE : 25/01/2023

1. Heard.

2. The applicant has filed this application under Section 21 (4) of the MCOC Act for grant of bail. The applicant has been arrested in Crime No.2/2019 for the offences punishable under Sections 3, 25 of the Indian Arms Act read with Section 135 of the Bombay Police Act. The provisions of the MCOC Act were added later on.

3. In all six accused were arrested and out of six, five accused have been released. The applicant is the only one languishing in jail. The reasons why his application came to be rejected by the learned

Sessions Court finds place in paragraphs 5 and 6 of the order dated 23.8.2022, which reads thus:-

“5. At this juncture, it would not be appropriate to hold that the applicant was not having conscious possession of the firearms and therefore, the provisions of the Arms Act are not applicable when the charge is already framed in the matter vide Exh.137 after giving opportunity of hearing to the applicant and other accused. Similarly, it would not be appropriate to hold that there is no role of the applicant in the substantive offence when prima facie, there is material to show that one Sunil Silka and co-accused Sanjay Khare had been to the house of the applicant on 15.1.2019, where the applicant gave amount of Rs.1,20,000/- to co-accused Sanjay Khare to purchase firearms and ammunitions. It would not be out of place to mention here that the said consignment was in transit when the co-accused were nabbed holding firearms with them. Therefore, it would be appropriate to deal the issue of conscious possession after the prosecution evidence.

6. The statement of co-accused Sanjay Khare was recorded under Section 18 of the MCOC Act,

wherein he categorically stated that he was carrying 4 pistols and one revolver to supply the firearms to Naxlites. The same were supplied at the behest of the applicant. The applicant asked him to procure 10 pistols to be supplied to the Naxlites through one Advocate and gave him Rs. 1,20,000/- for the purchase of the firearms. He contacted one Murroseth on 16.1.2019 and went to Jamalpura in Bihar and visited village Mufasil. He purchased 20 rounds and 4 magazines from Murroseth, who is also accused. On his request, co-accused Supansingh accompanied him. He along with Supansingh were carrying firearms and after being alighted at Nagpur on 24.1.2019, they were apprehended by the police. Having regard to the allegations, it will reflect that there is coherence and continuity in the act. The applicant/accused placed order on 15.1.2019, the co-accused Sanjay Khare had gone to Bihar immediately and was apprehended carrying firearms on 24.1.2019. The statement of the accused under Section 18 of the MCOC Act has legal sanctity. The evidentiary value of the confessional statement cannot be given go-by. At this stage, the statement under Section 18 of the

MCOC Act cannot be ignored and has to be looked in”.

4. Mr. Mardikar, learned Senior Advocate submits that Sunil Silka has been examined as prosecution witness. He did not support the prosecution version. He submits that material witnesses have also been examined and none of them have supported the prosecution version.

5. Learned Special Public Prosecutor has fairly stated that material witnesses have not supported the prosecution version. Even otherwise role assigned to the applicant is that he has given Rs.1,20,000/- to Sanjay Khare to purchase country made pistols. The amount appears to have been given one year prior to the date when the FIR was lodged. The only witness to this transaction was Sunil Silka. He has turned hostile. The other evidence is in the form of confession of co-accused Sanjay Khare recorded under Section 18 of MCOC Act. Sanjay Khare is the one who has taken the amount from the applicant and purchased fire arm. He has been released on bail.

6. Learned Senior Counsel for the applicant submits that the order dated 25/01/2023

in Criminal Application No. (BA) No.934/2020 by which Sanjay Khare has been released on bail would show that this Court was of the view that the provisions of MCOC Act are not applicable.

7. Considering the above status and in view of the fact that material witnesses have not supported the prosecution version, I am satisfied that there is reasonable ground for believing that the applicant is not guilty of alleged offence. This finding having been recorded on the ground that material witnesses have turned hostile, the findings that the applicant is not likely to commit any offence while on bail would be insignificant. Even otherwise, the applicant could be put to appropriate terms to protect the interest of the prosecution.

8. Needless to mention that the observations made in this application are strictly for deciding the present application of the applicant and the trial Court shall not get influenced by the same and shall be free to decide the matter on its merits.

9. Resultantly, facie, here following order is passed:

In the circumstances, Criminal application is allowed on the following conditions :

(i) The applicant – Sheikh Hajibaba s/o Sheikh Sarvar shall be released on bail in connection with Crime No.2/2019 for the offences punishable under Sections 3, 25 of the Indian Arms Act and Section 135 of the Bombay Police Act with Police Station, Kalachowki, Mumbai (ATS), on his executing Personal Bond of Rs. 1,00,000/- (Rs. One lakh only) with one surety or two sureties in the like amount.

(ii) The applicant shall not issue threats or tamper the prosecution witnesses.

(iii) The applicant shall attend Police Station once in a month on every first Monday of the month.

(iv) The applicant shall surrender his passport to the concerned Police Station.

(v) The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

JUDGE

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 20.04.2023 13:24