



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1615 OF 2023

Rizwan Khan s/o Shafik Khan
Age: 28 years, Occu.: Business,
R/o. Jam-Parwa Road, Dargah Road,
Parbhani, Tq. and Dist. Parbhani.

.. Applicant

Versus

The State of Maharashtra
Through Kotwali Police Station,
Tq. and Dist. Parbhani.

.. Respondent

...
WITH
CRIMINAL APPLICATION NO.3949 OF 2023
IN BA/1615/2023

Shaikh Salim s/o Shaikh Amir
Age: 32 years, Occu.: Nil,
R/o. Kurban Ali Shah Nagar,
Darga Road, Tq. and Dist. Parbhani

.. Applicant

Versus

1. Mohd. Rizwan s/o Mohd.,
Age: 36 years, Occu.: Nil,
R/o. Darga Road, Parbhani,
Tq. and Dist. Parbhani.
2. The State of Maharashtra
Through Kotwali Police Station,
Parbhani, District Parbhani

.. Respondents

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Mr. Vishal A. Bagdiya, Advocate for applicant in Bail Application No.1615 of 2023 and for respondent No.1 in Criminal Application No.3949 of 2023.
Mrs. V. S. Choudhari, APP for the respondent – State in both the applications.
Mr. S. R. Pande, Advocate for applicant in Criminal Application No.3949 of 2023.

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : DECEMBER 22, 2023

PRONOUNCED ON : JANUARY 05, 2024

ORDER :-

. Criminal Application No.3949 of 2023, filed by the informant seeking permission to assist learned APP, stands allowed and disposed of.

2. Present application has been filed under Section 439 of the Code of Criminal Procedure. The applicant in present bail application has been arrested in connection with Crime No.0139 of 2021 registered with Kotwali Police Station, District Parbhani for the offence punishable under Sections 307, 324, 109, 143, 147, 148, 149, 336, 337 of the Indian Penal Code, under Sections 4/25 of Indian Arms Act, under Sections 37(1), 37(3), 135 of the Maharashtra Police Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act (hereinafter referred to as the "MCOC Act"). The applicant has been posed as accused No.1 in the FIR. Initially, when the FIR was registered, it was under the Sections of Indian Penal Code, Arms Act and Maharashtra Police Act. Later on, offences under the MCOC Act were came to be added. Now, the investigation is over and charge-sheet has been filed before the learned Special Court under the MCOC Act. However, as the matter progressed i.e. after the charge-sheet, it appears that vide application Exhibit-75 in Special Case No.154 of 2021, present applicant has been discharged under Section 227

of the Code of Criminal Procedure of the offence punishable under Sections 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act, yet it is to be noted that when it is there for the co-accused, the matter would still be tried by the Special Court under the MCOC Act.

3. It will not be out of place to mention here that the present bail application is the second bail application of the applicant. His earlier application i.e. Bail Application No.284 of 2022 came to be rejected by this Court on 07.06.2022.

4. Heard learned Advocate Mr. Vishal A. Bagdiya for the applicant in Bail Application No.1615 of 2023 and learned APP Mrs. V. S. Choudhari for the respondent – State assisted by learned Advocate Mr. S. R. Pande for the original informant.

5. It has been vehemently submitted on behalf of the applicant that the injured Imran in this case is having Criminal background. The FIR is lodged by his friend Shaikh Salim Shaikh Amir. There are two more FIR's arising out of the same incident. One is Crime No.147 of 2021, which came to be lodged by the present applicant – Rizwan Khan on 04.07.2021 in respect of the incident dated 24.06.2021 and another FIR vide Crime No.138 of 2021 came to be lodged by one Shaikh Ismail Shaikh Yunus for the offence punishable under Sections 279, 337, 427 read with Section 34 of Indian Penal Code and under Section 4, 7 and 27 of the Indian Arms

Act. From the two other FIRs, it can be certainly said that the injured himself had opened the fire and one of the bullet had hit the car of the said third person Shaikh Ismail. Therefore, when the injured himself was also holding a firearm, it requires no sympathy towards the injured. Though charges under MCOC Act were also invoked, yet the applicant has been discharged and then the co-accused against whom still the MCOC Act charges are there i.e. Mohammad Rizwan has been released on bail by the Hon'ble Supreme Court by order dated 06.11.2023 in Petition(s) for Special Leave to Appeal (Crl.) No(s).8629 of 2023. Another co-accused Asef Khan has been released on bail by the learned Special Judge/Additional Sessions Judge-2, Parbhani by common order below Exhibit-10, 12, 13 in Special (MCOCA) Case No.154 of 2021 dated 08.02.2022. Under the said circumstance, the applicant now deserves to be released on bail. He is in jail since 04.07.2021.

6. Per contra, the learned APP strongly opposed the application and submitted that though as against the present applicant the MCOC Act charges have been dropped i.e. he has been discharged under Section 227 of the Code of Criminal Procedure, yet he would be tried with the co-accused against whom the offence under MCOC Act is made. Further, as regards the merits of the case is concerned, role attributed to the applicant is that he has assaulted the injured Imran with sword. There is electronic evidence against him in the form of CCTV footage. The charge-sheet runs

in thousands of pages taking into consideration the MCOC Act charges and the role attributed to the present applicant is different and, therefore, he does not deserve to be released on bail.

7. At the outset, we will have to consider now the position as it is standing. When this Court had rejected the earlier bail application of the applicant, at that time, there were MCOC Act charges against him and thereafter he has filed the application Exhibit-75 under Section 227 of the Code of Criminal Procedure to discharge him from the offences punishable under the MCOC Act. It came to be allowed by the learned Special Judge by giving reasons on 23.02.2023. However, again it appears that learned Special Judge, Parbhani has passed a separate order below Exhibit-1 in Special Case No.154 of 2021 on 16.06.2023 discharging all the accused from the offences under MCOC Act and, therefore, the case was directed to be re-registered as Sessions Case. That means, none of them is liable to face trial under the MCOC Act. Learned APP has not made it clear as to whether both the orders discharging all the accused from the MCOC Act charges are challenged by the prosecution before this Court or not and, therefore, only the facts in the present case are required to be considered.

8. As regards the facts in this case are concerned as against the present applicant, there are allegations that he has assaulted injured Imran with sword and thereafter that sword was taken by another Rizwan, but his

name is Mohammad Rizwan @ MR Mohd. Rafiq. It also appears that the injured Imran, who has criminal cases against him, had opened fire. Imran appears to have received injuries to his both hands, legs and it was severely bleeding. There is discovery at the hands of accused. There is evidence in the nature of CCTV footage and also the alleged confession under the MCOC Act, however, what would be its evidentiary value now will have to be decided by the learned Sessions Judge. The injury certificate of Imran shows that he had received eight injuries and most of them are incised and one is stab injury. Out of them five are grievous injuries. Investigation is over and charge-sheet is already filed. The further custody of the applicant is not required.

9. This Court should now take the decisions which have come up after the rejection of the earlier application of the applicant by this Court. Co-accused Mohammad Rizwan came to be released on bail by the Hon'ble Supreme Court on 06.11.2023 taking into consideration his incarceration for a period of two years. Further, another co-accused Asef Khan was earlier released on bail by the learned Additional Sessions Judge-2 Parbhani on 08.02.2022, prior to the rejection of bail application of the present applicant. But taking into consideration the role at that time the earlier bail application of the present applicant was rejected (the charges under MCOC Act were also considered at that time). Under the said circumstance, the present application deserves to be allowed. Hence, the

following order :-

ORDER

- (1) Bail application stands allowed.
- (2) The applicant – **Rizwan Khan s/o Shafik Khan**, be released on bail in connection with Crime No.139 of 2021 registered with Kotwali Police Station, Taluka and District Parbhani for the offence punishable under Sections 307, 324, 109, 143, 147, 148, 149, 336, 337 of Indian Penal Code, under Section 4/25 of the Indian Arms Act and under Section 37(1), 37(3) and 135 of the Maharashtra Police Act, on the same terms and conditions, to be imposed by the trial Court, on which co-accused Mohammad Rizwan has been released on bail under the orders passed by the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) No(s).8629 of 2023 dated 06.11.2023.
- (3) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI]
JUDGE

scm