

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

BAIL APPLICATION NO. 3349 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Alfaraz Iftekhar Khan @ Tantan ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Zoheb Shaikh, for the Applicant.
Mr. Tanveer Khan, APP for the State/Respondent.
PSI S. D.Patil, Shivaji Nagar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 6th MARCH, 2024

PC:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Special Case No.34 of 2021 arising out of CR No.481 of 2020 registered with Shivaji Nagar Police Station, Mumbai, for the offences punishable under Sections 307, 341, 506(2), 141, 143, 144, 147, 148 and 149 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 4, 25 and 27 of the Indian Arms Act, 1959, Section 37(1)(a) read with Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act").
3. At the outset, the learned Counsel for the applicant invites attention of the Court to an order dated 19th August, 2023 in

BA/3417/2021, whereby co-accused Rizwan Shaikh, who has been attributed identical role was granted bail. The learned Counsel for the applicant submits that the applicant stands on a better footing as the applicant has not at all been arraigned alongwith alleged gang leader, unlike the co-accused Rizwan Shaikh, who had been arraigned in CR No.316/2016 with the gang leader. The learned Counsel for the applicant further submitted that the invocation of the provisions contained in MCOC Act is infirm. Firstly, the sanctioning authority proceeded to grant sanction to invoke the provisions of MCOC Act on the premise that the offences were committed by the organized crime syndicate for "other advantage" though the proposal was submitted on the ground that offences were allegedly committed by the organized crime syndicate for "pecuniary advantage". Secondly, in two of the crimes which were taken into account the applicant had already been acquitted.

4. The learned APP resisted the prayer for bail. It was submitted that the sword which the applicant had used at the time of commission of the offences came to be recovered pursuant to the discovery made by the applicant. It was submitted that since trial has commenced and four witnesses have been examined, the trial may be expedited.

5. While releasing the co-accused Rizwan, this Court had *inter alia* observed as under:

“3. The case of the prosecution in brief is that on 16/09/2020 the co-accused Mukhtar and others assaulted the Complainant by means of swords and stones. The only allegation against the Applicant No.2 herein was that he was armed with sword and that he had threatened the persons, who were trying to help the injured. Though the learned APP has stated that the Applicant No.2 is also an accused in Crime No.316 of 2016, a perusal of the said charge-sheet shows that one Rizwan, whose full name and address is not disclosed, is shown as an absconding accused.

....

5. Considering the role attributed to the Applicant No.2, his age and also there being no *prima facie* material to show his link with the organised crime syndicate, in my considered view this would be a fit case to exercise discretion under Section 439 of the Cr.P.C.”

6. The aforesaid reasons which weighted with this Court in releasing Rizwan govern the claim of the applicant with equal force. The role attributed to the applicant in the alleged occurrence is that of restraining the persons, who were trying to rescue the injured. No role of assault by any weapon has been attributed to the applicant. However, interestingly, the prosecution relies on the memorandum of disclosure statement, which records that the applicant had volunteered to show the place where the sword with which he had assaulted a person, was concealed. Moreover, *prima facie*, the invocation of the provisions of MCOC Act against the applicant appears to be infirm and wholly unjustifiable.

7. As the prosecution proposes to examine a number of witnesses, the mere fact that the trial has been commenced, can not be a ground to detain the applicant.

8. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in Special Case No.34 of 2021 arising out of CR No.481 of 2020 registered with Shivaji Nagar Police Station, Mumbai, on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Shivaji Nagar Police Station on the first Monday of every alternate month between 10.00 am to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.

- (v) 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.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]