

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

CRIMINAL BAIL APPLICATION NO. 1041 OF 2024

Jayesh Hiranman Dive ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Aniket Vagal with Ms. Savy Kolhekar, Advocate for Applicant.

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

CORAM:- ANIL S. KILOR, J.

DATED:- 25th NOVEMBER, 2024

PC:-

- 1) Heard.
- 2) By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 242 of 2023 registered with Ambad Police Station, Nashik for the offences punishable under Sections 307, 109, 114, 120-B, 201 and 385 of the Indian Penal Code, 1860, Section 3(1)/25 of the Arms Act, 1959, Section 7 of Criminal Amendment Act, 2013, Section 142 of Maharashtra Police Act, 1951 and Sections 3(1)(ii), 3(2), 3(4) and 3(5) of Maharashtra Control of Organized Crime Act, 1999 ('MCOCA').
- 3) Mr. Vagal, the learned Counsel for the applicant submits that though in the FIR, applicant was named, alleging that he was present at the time of the incident, it is falsified by the statement of the victim,

who knows the applicant, however, he did not name the applicant in his statement. He, therefore, submits that there is no evidence except figuring of his name in the FIR, to show that the applicant was at the spot or the applicant is involved in the alleged offence. He further points out that, if the CDR is perused, the applicant was at a distance of 6-7 km away from the spot of the incident.

4) On the other hand, the learned APP while opposing the application, submits that the provisions of the MCOC Act, 1999, have been invoked against the applicant and earlier twice preventive action was taken against him by issuing externment orders.

5) It is further pointed out that there are 10 antecedents against the applicant, and out of the same there are three cases under Section 302 of IPC. It is further pointed out that he has been convicted under Section 307 of IPC and when he was on bail during the pendency of the appeal in the said matter, he committed the present offence.

6) Having gone through the charge-sheet and the relevant material collected by the Investigating Officer during the investigation, it is evident that the applicant was named in the FIR. Further if the statement of the victim is perused, he corroborated the fact that the auto-rickshaw came at the spot and in the said auto rickshaw he saw that one Kiran was driving the said auto rickshaw and 2- 3 persons were sitting in the said auto rickshaw. Similar is the statement of the informant, the only difference is that in the statement of the informant, he named the persons who were seen sitting in the said auto rickshaw.

7) As far as the CDR is concerned, there is a gap of 10-15 minutes between the time he was at the location recorded in the CDR and in the time of the incident. Thus, it is possible that in the time period of 10-15 minutes he could have reached the spot.

8) Therefore, at present, considering the past criminal record of the applicant and further considering the purpose of invocation of MCOC Act, 1999 and in view of other incriminating material available against the applicant, I am not inclined to grant bail. Accordingly, the application is **rejected** and disposed of.

[ANIL S. KILOR, J.]