



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

954 BAIL APPLICATION NO. 944 OF 2025

MAHESH GORAK BORHADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Vikhe Pratap B.

APP for Respondents/State : Mrs. A.S. Mantri

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CORAM : ARUN R. PEDNEKER, J.

DATE : 10/06/2025

P.C. :

1. Heard the learned counsel for the applicant and the learned APP for the respondents-State.
2. The applicant is seeking bail as he was arrested in connection with Crime No. 338/2025 dated 28.3.2025 with Shirdi Police Station, District Ahmednagar for the offences punishable under sections 3 r/w. 25 and 7 of the Arms Act.
3. The case of the prosecution is that police received secret information that the applicant was in possession of firearm. It is alleged that when raid was effected on the house of the applicant, the applicant was found in possession of a country made pistol and two live cartridges, so also stolen motorcycle was also seized from the applicant. Accordingly, the offence is registered against the applicant under section 3 r/w. 25 and 7 of Arms Act.
4. The learned counsel for the applicant relies upon para No. 14 of the judgment of the Division Bench of this Court in the case of **Mr. Sunderlal Tuhiram Parashar Vs. The National Investigating Agency** delivered in Criminal Appeal No. 380/2020 dated 29th September 2021, which is as

under :-

"14. On a plain reading of aforesaid provisions, it becomes abundantly clear that section 25(1A) provides punishment for acquisition, possession and use of arms which are automatic, of sophisticated nature and have mass destruction potential. A country made pistol hardly satisfies the description of prohibited arms. Thus, the enhanced punishment prescribed under section 25(1A) for contravention of section 7 of Arms Act may not be attracted in the facts of the case at hand. Resultantly, the appellant can, in the peculiar facts of the case, be legitimately prosecuted for the offences punishable under section 120B of the Penal Code and 25(1B)(a) of the Arms Act for contravention of the provisions contained in section 3 of the said Act. The later offence entails maximum punishment of three years imprisonment. Indisputably, the appellant has been in custody since 24th April 2019. The appellant has, thus, suffered incarceration for a period of 2 years and 5 months. Further incarceration of the appellant, as an under-trial prisoner, therefore, appears wholly unjustifiable."

Relying on the judgment cited supra, the learned counsel submits that section 7 would not be applicable to the instant case as this Court in the judgment cited supra has observed that a countrymade pistol hardly satisfies description of prohibited arms even assuming that the countrymade pistol was recovered from the applicant. He submits that only section 3 of the Arms Act can be invoked against the applicant for which maximum punishment is three years. The learned counsel submits that the applicant is arrested on 28.3.2025 and the chargesheet in the matter is also filed. The learned counsel therefore prays for releasing the applicant on regular bail.

5. Per contra, the learned APP submits that one country made pistole and two live cartridges were found in possession of the applicant, so also the applicant was also found in possession of stolen motorcycle. Hence, she prayed to reject the bail application.

6. Considering the submissions above, prima facie applicability of section 7 of the Arms Act against the applicant is doubtful in view of the judgment of the Division Bench of this Court cited supra. Section 25(1-B)(a) of the Arms Act provides for punishment for contravention of section 3 and reads as under :-

“(1-B) Whoever-

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3;

.....

shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine;”

7. Considering that the chargesheet in the matter is filed and there is doubt about the applicability of section 7 of the Arms Act in view of the judgment cited supra and as there are no antecedents against the applicant, this Court holds that regular bail can be granted to the applicant.

8. In view of the above, the application is allowed in the following terms :

a] The applicant shall be released on bail in connection with Crime No. 338/2025 dated 28.3.2025 with Shirdi Police Station, District Ahmednagar for the offences punishable under sections 3 r/w. 25 and 7 of the Arms Act, on furnishing PR bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

b] The applicant shall co-operate with the trial Court and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

c] The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses and

other persons concerned with the case.

d] The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

9. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled.

10. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application stands disposed of.

[ARUN R. PEDNEKER, J.]

SSC/