

Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.156 OF 2025

Faizan Abdul Hak Kureshi

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Ms. Aruna S. Pai with Mr. N. M. Nadar, Advocates for the Applicant.
 - Mr. Hitendra J. Dedhia, APP for the Respondent/State.
 - Mr. Samadhan Magade, API, Mumbra Police Station is present.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2025.

P.C.:

1. Heard Ms. Pai, learned Advocate for the Applicant and Mr. Dedhia, learned APP for the State.

2. The present Applicant is indicted in the offence and is seeking bail in connection with C.R.No.246 of 2023 registered with Mumbra Police Station for the offences punishable under sections 394, 341, 504, 427 r/w 34 of the IPC and Section 4(25) of Arms Act and Section 3(1)(ii), 3(ii), 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA). The Applicant is arrayed as accused No.3 in the present crime. There are a total four accused persons. Accused No.1 is alleged to be the gang-leader and accused Nos.2, 3 and 4 are alleged to be his

associates and active members of the organized crime syndicate headed by accused No.1.

3. In so far as nexus of present Applicant with the crime in question is concerned, what emanates from prosecution record is that he is known to accused No.1. In so far as specific incident in the present crime is concerned, it is seen that First Informant while returning after visiting his relative at about 22.45 hours was proceeding in his car at Mumbra bypass when one Avenger motorcycle coming in high speed collided with his car. Applicant was driving the motorcycle. That led to an altercation resulting in Informant lodging a complaint that they were robbed of their valuables, cash and mobile handsets by the two motorcycle riders. *Prima faice*, when FIR is seen, allegation in so far as present crime is concerned, it is pointedly directed against four unknown persons. Two of them riding the Avenger motorcycle and two riding a scooty bike. In so far as reference to present Applicant is concerned about his presence at the scene of crime, there is no specific statement of any witness or any prosecution material incriminating him to have been present at the scene of crime. Reference to fourth accused person is by the name "Babu" which is not related to Applicant before me.

4. Invocation of stringent provisions of MCOCA are primarily in view of Applicant having antecedents, namely, six antecedents in respect of which court cases are pending, all registered with Mumbra Police Station. There is also an apparent discrepancy argued by learned Advocate for the Applicant with respect to the sanction which has been obtained, but I need not advert to the same in view of the nexus and role of the Applicant not being *prima facie* clearly shown to the Court at the threshold. There is no doubt that prosecution has invoked the stringent provisions of the MCOCA but mere invocation of the said provisions would not establish complicity of Applicant unless *prima facie* role of Applicant is deciphered and shown to the Court from the prosecution case/ material on record.

5. Affidavit-in-reply has been filed by Mr. Uttam Kolekar, Assistant Commissioner of Police, perusal of which would show that Test Identification Parade in so far as identification of accused No.1 was conducted before the Tahasildar/Executive Magistrate, Thane, wherein First Informant identified accused No.1. Nothing prevented the prosecution from conducting the Test Identification Parade for identification of the present Applicant which has not been conducted. Case of the prosecution is primarily based on confessional statement of accused No.1 and 2 *qua* and against the Applicant before me.

Confessional statements as argued by learned Prosecutor will have to be considered considering indictment of Applicant in a Special Act, namely, MCOCA. However, unless *prima facie* nexus of Applicant is exhibited and shown from the prosecution case on record, the said confessional statements cannot be accepted by the Court at this stage.

6. In view of the above *prima facie* observations, considering that prosecution is unable to show precise role of Applicant, neither the prosecution witnesses or First Informant has identified Applicant or they have conducted the Test Identification Parade which they have conducted *qua* the principal accused No.1, the Applicant before me has made out a case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

7. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]