

Order below Exhibit 1
In Criminal Miscellaneous Application No. 1169/2015
(Passed on 11/12/2015)

Nature of the Application

1. This is an application filed by the accused-Sufiyan Aslam Khan (for short 'accused') seeking anticipatory bail under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. I 149/2015 registered at Khandeshvar police station under Sections 326, 323, 504 and Section 120-B read with (for short r.w.) 34 of the Indian Penal Code (for short 'I.P.C.') and 3 and 25 of Indian Arms Act (For short 'Arms Act).

Contents in the Application

2. The accused has contended that in the first information report (for short 'F.I.R.') lodged by the informant Tejaswini Sameer More (for short 'informant') it is alleged that her company director Venkatesh was assaulted on 16/09/2015 by three unidentified persons and hence C.R. No. 149/2015 is registered against the unknown persons.

3. He is innocent and have not committed any offence. He is falsely implicated in this case. The weapons used are already recovered. He is ready to abide by the conditions imposed.

4. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Investigating Officer.

5. The investigating officer (for short I.O.) has filed reply through Assistant public prosecutor (for short A.P.P.). The I.O. has strongly objected the application.

6. The I.O. has contended that the investigation is in progress. The accused by joining hands with Hrishikesh committed the crime. The accused attacked the informant with pistol and iron rod. There was dispute between the informant's company and Hrishikesh in respect of contract and Hrishikesh hired goons i.e. to say the accused and other accused by paying Rupees 25,000/-. The weapons used in the crime are recovered at the behest of the accused No.1-Prasad. If the application is granted the accused will tamper the evidence, he is likely to abscond and will commit similar type of offences.

7. On these grounds the I.O. has prayed to reject the application.

The Arguments

8. I have heard Shri. A. R. Shaikh, advocate for the accused and Shri. B. R. Salvi, A.P.P. for the prosecution, in extenso.

9. Shri. Shaikh, advocate for the accused forcefully argued that the report is lodged by the informant with ulterior motive. The informant though has mentioned that three persons attacked Venkatesh, already four accused are arrested. He is innocent. He is ready to abide by the conditions imposed on him. Hence, the application deserves to be granted.

10. Shri. Salvi. A.P.P. for the prosecution vehemently argued that the investigation is in progress. The offence committed by the accused is of serious nature. There is previous enmity between the informant's company and Hrishikesh. In order to facilitate investigation custody of the accused is necessary. There is sufficient evidence to hold

involvement of the accused in the crime. Hence, the application is liable to be rejected.

Points and Findings

11. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused for granting the relief of bail, as prayed for ?	No.
2)	What order ?	Application Rejected.

Reasons as to Point Nos. 1 and 2

12. The F.I.R. and police papers produced on record clarifies that the informant lodged report against three unidentified persons. The police have already arrested four accused. According to I.O. accused is the person who was hired by the master mind of the offence viz. Hrishikesh and he committed the offence.

13. The injury suffered by the informant could be said to be grievous and considering all the facts and the intention gathered from all the circumstances it could be said that case is made out under Section 326 of the I.P.C., prima-facie and as the involvement of the accused in the offence is clear, he is not entitled for bail.

14. The accused is involved in similar types of offences bearing C. R. No. I 430/2014 Chathursingi Police Station, Pune C. R. No. I 123/2014 Taloja Police Station and C. R. No. I 113/2011 Taloja Police

Additional Sessions Judge, Raigad-Alibag.

Station, as is clear from the police papers. In spite of registration of three offences previously the involvement of the accused in this crime leads me to infer positively that he is a habitual goon and is hired to commit the offences affecting human body. Therefore, in my considered view he is not entitled to be released on bail.

15. The lodging of F.I.R. belatedly is no ground at this stage to hold that whatever is alleged by the accused is true. The effect of delay can very well be taken care of at the time of trial if the investigation ends in filing of charge-sheet.

16. It is well settled that the provision of bail under Section 439 of the Cr.P.C. and is meant for saving the innocent person from unnecessary detention. The said provision cannot be used for a person, who prima facie, is involved in criminal activities.

17. To sum up, the offence with which the accused is charged is of serious nature. There is prima-facie evidence to hold his involvement in the offence. The accused is a habitual offender. If the application is granted it will definitely hamper the investigation. The accused though is shown by him as resident of Kamothe, the possibility of his fleeing from justice cannot be ruled out as he is a habitual goon. The involvement of the accused in the crime registered against him is clear as there is direct evidence to connect him with the offence with which he is charged. If that be so, the contention of the accused that he is innocent and he is falsely implicated in the crime, prima facie can not be accepted. Considering the above-mentioned facts and circumstances of the case, I am declined to grant bail to the accused.

18. It is made clear that the observations made in this order are made for the limited purpose of this application only and shall not have any effect on the merits of the case under investigation and all parties are at liberty to agitate their respective cases at the time of inquiry or trial in the case under investigation, on merit without being prejudiced even in the least by any of the observations made in this order.

19. Accordingly, I answer point No. 1 in the negative and point No. 2 as application rejected, as per final order.

20. In the result, following order :-

ORDER

1. The application is rejected.
2. The police papers be returned.

(Pronounced in Open Court).

Date- 11/12/2015.

(M.B.Lambe),
Additional Sessions Judge,
Raigad-Alibag.

