



CNR No.MHLA010035842022.

ORDER BELOW EXH. 10 IN Spl.C. NO.84/2022

(State Vs. Narayan)

1. The accused No. 6 Prashant s/o Vilas Kamble has filed this second application for bail under Section 439 of the Criminal Procedure Code in Crime No. 97/2022 registered at Chakur Police Station, Dist. Latur for the offence punishable under Sections 302, 201, 120-B, 212, 216 r/w. 34 of the I.P.C. and Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999(MCOC Act).
2. Read application and the reply filed by learned PP and I.O. vide Exh. 12 & 13. Heard learned counsel Shri A.D. Mane for accused No. 6 and learned PP Shri S.V. Deshpande. Perused the record of the case.
3. On the basis of the report lodged by one Manmanth Abande, A.D. No. 22/2022 was registered under Sec. 174 of Cr.P.C. A dead body of unknown person was found in Chapoli Shivar, Gat No. 211. There were injuries on the body by sharp edged weapons. In the course of inquiry, it was revealed that some unknown persons had assaulted the said person by means of edged weapons on his head, face, neck and back and committed his murder. Therefore, P.S.I. Tukaram Phad, attached to Chakur Police Station, lodged FIR of the incident. On 20.03.2022 Chakur Police registered Cr. No. 97/2022 for offence under Sec. 302 of I.P.C. In the course of investigation, it was transpired that the deceased was Sachin @ Lalu Shivsamb Davangave, resident of Shirur Tajband and the accused No.1 Narayan due to landed dispute by doing conspiracy with other accused

committed his murder with the help of accused No. 2 Rajkumar Ghatcherle, his brother Juvenile in conflict with law and Accused No. 3 Sudhir Rapatwar by assaulting him by means of knife, sickle and stone. According to the prosecution the accused No. 1 is running a gang of Organised Crime Syndicate in Latur and Nanded District with the help of different members and he used to commit serious offences for economic gain with the help of the members of Organised Crime Syndicate. He was absconding. Police tried to trace out him in various places at Maharashtra, M.P, U.P, Rajsthan, Delhi, Chandigad, Uttaranchal, Haryana etc. On 01.06.2022 in the night the accused No. 1 had come to meet his wife. When, P.I. Balaji Mohite went to chess him, the accused No. 1 assaulted him and therefore, he made fire in self defence and thereby he sustained injuries and Cr. No. 305/2022 came to be registered against accused No. 1 under Sec. 307 of I.P.C. The allegations against the applicant/ accused No. 6 is that co-accused Amol Kadam had called the accused No. 6 for playing Rang Panchami. The accused enjoyed the Rang Panchami with Co-accused and co-accused Rajkumar, Ramesh and the applicant drink liquor and the present accused alongwith Ramesh Bhalerao provided two bottle liquor to co-accused and thereafter he left to his village. As per the sanction accorded by I.G. Nanded, the offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act has been registered against all the accused.

4. Learned counsel for the applicant has submitted that the applicant has not committed any offence. He has been falsely implicated in this case. The offence under Sec.302, 201, 120-B of I.P.C. and 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act is not attracted against the applicant. He has no concern with the alleged offence. No role has been attributed to accused No. 6. The earlier bail

application of the applicant has been rejected, because the investigation was in progress. Now the investigation is completed and the chargesheet is filed. The applicant has not committed any sort of crime. He has no criminal antecedents. No any previous charge-sheet has been filed against him. He is 19 years old. He was not present at the time of alleged conspiracy. The vehicle of the applicant has been unnecessarily seized. The applicant is not involved in any unlawful activities with the object of gaining pecuniary benefits. His old parents are depend on him. If the applicant is kept behind bar, he will suffer great injustice. He is ready to co-operate the investigating agency and obey the orders of the Court. Therefore, learned counsel for applicant prayed for grant of bail to the applicant. In support of his contentions, learned counsel for the applicant relied on the decision in **Ashish Shivkumar Wankhede Vs. State of Maharashtra [Criminal Application No. 1058/2019, dated 4 February, 2020, High Court of Judicature at Bombay, Nagpur Bench, Nagpur]** and **Dinesh Bhondulal Baisware Vs. State of Maharashtra [2016 Law Suit (Bom) 989, High Court of Bombay (Nagpur Bench)]**.

5. Learned PP. opposed the application on the ground that the offence is serious antisocial offence. The accused have committed the offence by doing conspiracy at the instance of accused No.1. The present accused was in contact with other co-accused. The confessional statement of Ramesh Bhalerao and Sudhir Rapatwar has been recorded and they have stated the name of present accused. The motorcycle of the accused has been seized under Sec. 27 of the Evidence Act. If the applicant is granted bail, there is possibility of tampering with the witnesses. Therefore, learned PP. prayed for rejection of the application.

6. In the light of rival submissions of both the parties, I

have gone through the charge-sheet. The investigation has been completed and the charge sheet is filed against the accused. The allegations of commission of murder are against accused No. 2, 3 and juvenile in conflict with law at the instance of accused No.1. It is not the case of the prosecution that the present accused was involved in the actual commission of offence. The role of accused No. 6 is that after calling Amol Kadam he went to play Rang Panchami. He enjoyed Rang Panchami with some co-accused, provided liquor and went away by his motorcycle. There is nothing on record to show that the accused No. 6 was present at the time of the alleged conspiracy dated 12.03.2022 at New Godavari Bar. No involvement of the applicant is shown in the commission of the incident of murder or conspiracy for the same. The confessional statement of co-accused Sudhir Rapatwar and Ramesh Bhalerao never shows any involvement of present applicant in commission of the offence. The role of present accused is shown in respect of playing Rang Panchami with co-accused and providing liquor only. The record shows that no any previous charge-sheet has been filed against the applicant either individually or jointly with the main accused or co-accused showing that the applicant is involved in continuous unlawful activities with the objective of gaining pecuniary benefits with other accused. The vehicle is already seized from the accused. The applicant is 19 years old. No criminal antecedents are shown against him. The Hon'ble Apex Court in **Dinesh Bhondulal Baisware Vs. State of Maharashtra [2016 Law Suit (Bom) 989, High Court of Bombay (Nagpur Bench)]**, has relied on the decision of the Hon'ble Apex Court in the case of Ranjitsing Bramhajitsing Sharma wherein in para No. 49 the Hon'ble Apex Court has observed that - "We are furthermore of the opinion that restrictions on the power of the Court to grant bail should not be

pushed too far. If the Court, having regard to the materials brought on record, is satisfied and in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attracted a penal provisions.”

7. According to the applicant, he has not committed any offence. Merely because the accused No. 6 is one of the friend of co-accused and having contact with them, he cannot be kept behind bar for indefinite period. No criminal antecedents are shown against the applicant. No any previous charge-sheet has been filed against the applicant individually or jointly with other accused showing that he is

involved in continuing unlawful activities with objective of gaining pecuniary benefits. The charge-sheet is already filed. The applicant is ready to obey the conditions that may be imposed upon him. Therefore considering the facts and circumstances of the case and the limited role of the applicant, the applicant/ accused No. 6 is entitled for grant of bail on certain strengthen conditions. Hence, I proceed to pass the following order.

ORDER

- 1) Application is allowed.
- 2) Applicant/ accused No. 6 Prashant s/o Vilas Kamble, be released on bail on furnishing PR bond of Rs. 50,000/- with solvent surety of like amount in connection with Crime No. 97/2022 registered at Chakur Police Station, Dist. Latur for the offence punishable under Sections 302, 201, 120-B, 212, 216 r/w. 34 of the I.P.C. and Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999(MCOC Act).
- 3) The accused shall not commit any other offence.
- 4) The accused shall not contact to the complainant and other prosecution witnesses and tamper them till conclusion of the trial.
- 5) The accused shall submit his detail address with documentary proof.
- 6) The applicant shall regularly attend the dates fixed by the Court.
- 7) The applicant shall not leave jurisdiction of the Court without prior permission.

- 8) The breach of conditions shall lead to cancellation of bail.
- 9) P. & D. in the open Court.

(R.B. Rote)

Date : 14.10.2022. Additional Sessions Judge, Latur.