



CNR No.MHLA010035842022.

ORDER BELOW EXH. 17 IN Spl.C. NO.84/2022

(State Vs. Narayan)

1. The accused No. 8 Dhanaji s/o Tukaram Irbatanwad has filed this third 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. 44 & 45. Heard learned counsel Shri B.L. Shinde for accused No. 8 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. On 19.03.2022 a dead body of unknown person was found in Chapoli Shivar, Gat No. 211 where quarrying work was done. 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. against unknown persons. Police tried to find out the identity of the dead person. They found that the son of Shivsamb Davangave, R/o Shirur-Tajband namely Sachin @ Lalya

was missing since 18.03.2022. After getting information police called Shivsamb Davangave to police station and he identified the dead body and the articles and clothes was of his son Sachin @ Lalya. Shivsamb Davangave suspected that the accused No.1 Narayan due to landed dispute by doing conspiracy with other accused committed the murder of his son. The accused No. 1 Narayan was absconding. Police find out the mobile location of accused No.1 at Sangareddy, Hyderabad. Police went there and arrested him and he was kept in police station, but he fled away from police custody. Therefore, Cr. No. 98/2022 is registered against him under Sec. 224 of I.P.C. Police arrested the other accused. In the investigation it was revealed that the accused No. 1 due to landed dispute, hatched a conspiracy with other accused and gave contract (supari) to commit murder of deceased Sachin to accused No. 2 Rajkumar Gatcherle, his brother the JCL and Accused No. 3 Sudhir Rapatwar for consideration of providing one dhaba and an amount of Rs. 1 Lack to them. As per the conspiracy and contract they took deceased Sachin to Chapoli Shivar by means of motorcycle on the pretext of giving meal and assaulted him by means of sickle, knife and stones and committed his murder. 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 injury and Cr. No.

305/2022 came to be registered against accused No. 1 under Sec. 307 of I.P.C. Thereafter, 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 accused No. 8 has submitted that the accused No. 8 has not committed any offence. He has been falsely implicated in this case. The accused No. 8 has no criminal antecedents and no single case is registered against him. Therefore, the offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act is not attracted against accused No. 8. He has no concern with the alleged offence. The applicant is serving as assistant teacher. The F.I.R. is lodged against unknown persons. The applicant is implicated in this case only on the ground that he is the brother of accused No.1. There is no any role of accused No. 8 in commission of the offence. There is no any direct or circumstantial evidence against accused No. 8. The accused No. 8 is in custody since 27.03.2022. The previous bail applications were rejected on the ground of incomplete investigation. Now the investigation is completed and the charge sheet is filed. There is no eye witness of the incident. The statement of co-accused is not reliable against accused No. 8. No role of accused No. 8 is shown in the confessional statement of accused No. 3 & 9. There is no evidence in respect of the meeting dated 12.03.2022 and the alleged conspiracy. The accused No. 8 is residing separately. There is no evidence to show that the accused No. 8 is dealing with the property of accused No.1. The offence is not attracted against accused No. 8. The accused No. 8 is ready to obey the conditions that may be imposed upon him. Bail cannot be denied to a person on the basis of gravity of offence or as a measure of punishment. The accused No. 6 and 11 having similar role have been granted bail.

Therefore, the accused No. 8 is also entitled for grant of bail on the ground of parity. Hence, he prayed for grant of bail to accused No. 8.

5. In support of his contentions, he relied on the following decisions-

(i) **Sk. Mahmood Sk. Mahboob Vs. State of Maharashtra [2015 ALL MR (Cri) 3124]**, wherein it is observed that charge-sheet against accused, disclosing no substantive offence under MCOCA. Offences were allegedly committed in continuity with previous charge-sheet in respect of which trial is pending in some other Court. In order to prove charges in subsequent charge-sheet, respondent would have to establish continuing unlawful activities as defined under Sec. 2(d). No averment in subsequent charge-sheet regarding activities provided by law and being a cognizable offence punishable with three years imprisonment, first requirement of Sec. 2(d) not fulfilled. In such case, even if second requirement proved regarding more than one charge-sheet in preceding 10 years, same would be of no use. The accused persons entitled to be released on bail.

(ii) **Aakif Ateeque Nachan Vs. The State of Maharashtra [2014 ALL MR (Cri) 2189]**, wherein it is observed that only role attributed to applicant is that he is alleged to be one of the conspirator in respect of conspiracy to attack and kill informant. Presence of applicant alongwith other accused at Dhaba not established by examining natural witnesses i.e. waiters or other staff members of Dhaba. There are reasonable grounds for believing that applicant is not guilty of any of alleged offences. He is in custody for about one year and trial is not commenced. He is entitled to be released on bail.

(iii) **Bhupendra @ Golu s/o Suryakant Borkar Vs. State of Maharashtra [2017 ALL MR (Cri) 1561]**, wherein it is observed that

apart from prima facie case, possibility of committing similar crime by accused also to be shown for rejecting application for bail.

iv) **Saquib Abdul Hamid Nachan Vs. The State of Maharashtra [2014 ALL MR (Cri) 3481]**], wherein it is observed that it is not a case that applicant was present on spot or near it at the time of offence, no material showing applicant to be conspirator with respect to attack and kill informant. Possibility of applicant being suspected and implicated only on basis of belief that he is against Hindu activist cannot be ruled out. Bail granted.

6. Learned counsel for the accused No. 8 also relied on the decision in **Ganesh Dnyaneshwar Kurhe Vs. The State of Maharashtra [Criminal Bail Application No. 3556 of 2021, High Court of Judicature at Bombay dated 10 March 2022]**, **Ashish Shivkumar Wankhede Vs. State of Maharashtra [Criminal Application No. 1058/2019, dated 4 February, 2020, High Court of Judicature at Bombay, Nagpur Bench]**, **Dinesh Bhondulal Baisware Vs. State of Maharashtra [Criminal Application (BA) No. 424 of 2016, High Court of Bombay (Nagpur Bench)]**.

7. Learned PP. opposed the application on the ground that the offence is serious antisocial offence. The accused have committed the offence of murder by doing conspiracy with pre plan at the instance of accused No.1. The accused No. 8 is the brother of main accused No. 1 and he was looking after all the economic transactions and the property of accused No.1. As per the disclosure statement of accused No. 8, he has pointed out the place where the meeting for conspiracy was held. The father of deceased has lodged N.C. No. 593/2022 stating that he is receiving threat from the relative of the accused and there is danger to his life from the accused. If the accused No. 8 is granted bail, there is possibility of tampering with

the witnesses. Therefore, he prayed for rejection of the application.

8. In the light of rival submissions of both the parties, I have gone through the charge sheet and record of the case. The offence is serious offence of brutal murder and under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the MCOC Act. According to I.O. the accused No. 1 Narayan is the main culprit and gang leader and he used to commit organised crimes in Latur and Nanded District with the help of different members. He had dispute with the father of deceased Sachin in respect of a plot and Civil dispute is pending amongst them. Therefore, he gave contract (Supari) to accused No. 2 & 3 and the JCL to kill deceased Sachin in consideration of facilitating to open a Dhaba on the disputed land and giving Rs. 1,00,000/- to them. According to I.O., the accused No. 8 Dhanaji i.e. his brother and his son accused No. 10 Markandey used to look after his financial affairs. A meeting in respect of the conspiracy was held on 12.03.2022 in Godavari Bar in order to execute the contract between accused No. 1, 7, 8 and 10. The accused No. 2, 3 and the JCL after playing Dhulwad with the deceased on 18.03.2022 took the deceased to Chapoli Shivar by their motorcycle. The JCL, accused No. 3 Sudhir and Accused No. 4 Amol went to bring weapons and the JCL and accused No.3 brought the sickle and knife. They took the deceased at the quarrying work under pretext of giving meal and thereafter accused No. 3 Sudhir assaulted Sachin from his back side by means of sickle on his chest. The JCL assaulted him by means of knife on his neck and face. Then accused No. 2 took the knife and assaulted him on his head, cheek and nose. The accused no. 3 assaulted him by means of stones. After the incident, they went away by motorcycle. While going the motorcycle was punctured, therefore they made call to accused No. 4 Amol and informed him that the work is done and called him with his

motorcycle. Amol Kadam came by motorcycle alongwith accused No. 9 Ramesh. They gave their motorcycle to them and taken the punctured motorcycle. Thereafter, they took bath in a lake with their clothes. Thereafter, they made phone call to the accused No. 8/ accused No.5. The accused No.3 transferred Rs. 200/- to accused No. 4 and asked him to fill petrol in the motorcycle. Thereafter, they buried the sickle and knife used for commission of murder and concealed the weapons. The accused No. 3 made phone call to accused no. 1 and informed him that the work is done and asked him to transfer money. Thereafter, accused No. 1 transferred Rs. 5,000/- in the account of accused No. 3 Sudhir by online transfer. Thereafter accused No. 3 transferred Rs. 2,000/- in the account of accused No. 4 Amol and asked him to purchase new clothes for them. The accused Amol Kadam and Ramesh Bhalerao purchased T Shirt, night pant, underwear and gave to accused No. 2, 3 and the JCL. The accused No. 4 transferred Rs. 1,350/- in the account of Laxmikant Rathod for purchasing the clothes and Rs. 150/- in the account of witness Ashraf Momin for repairing the motorcycle. Thereafter, they destroyed their wearing clothes, belt, shoes, chappal by pouring petrol and setting on fire and destroyed the evidence. The accused No. 3 has transferred Rs. 900/- in the account of witness Balaji Kamble for purchasing new chappal and foot wears. The P.M. Report shows that the Medical Officer has noted 9 injuries on the person of the deceased and the cause of death is due to hemorrhagic shock due to excessive hemorrhage due to multiple injuries.

9. According to investigating officer as per the disclosure statement of accused no.2 and 3, the sickle and knife used in the offence has been recovered under Sec. 27 of the Evidence Act, the places of offence are detected. As per the disclosure statement of

accused No. 4, the Bajaj Discover Motorcycle has been seized.

10. According to I.O. the confessional statement of accused No. 3 Sudhir and accused No. 9 Ramesh Bhalerao has been recorded under Sec. 18 of the MCOC Act before S.P. Parbhani, wherein, they have stated that the offence has been committed as per the contract given by accused No. 1 for consideration of providing Dhaba and Rs. 1,00,000/- and accordingly accused No. 2, 3 and JCL assaulted Sachin by means of knife, sickle and stones and thereafter they destroyed their clothes and concealed the weapons. They have stated the roles of the other accused. There is evidence in the form of CC TV footage to show that the deceased was last seen together with accused No. 2,3 and JCL. There is evidence in the form of online money transfer and disclosure statement of the accused in respect of the places where the offence has committed and where the conspiracy was held. Various serious crimes are registered against accused No. 1. According to the prosecution, the accused No. 1 is running a gang of Organised Crime Syndicate with the help of different members with the object of gaining pecuniary benefits. The offence is serious antisocial offence of murder of a young boy with pre-plan with offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the MCOC Act. As per the provisions of Sec. 21 (4) of the MCOC Act no person accused of an offence under MCOC Act shall be released on bail unless the Court satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The accused No. 6 and 11 are granted bail because, no prima facie role either in the conspiracy or in the commission of offence of murder has been shown against them. The role of present accused No. 8 is different than accused No. 6 and 11. The present accused No. 8 is brother of accused No. 1.

According to I.O. he had participated in the conspiracy held at 12.03.2022 at Godavari Bar with main accused and accused No. 7 and 10 and he was looking after the economic transactions and the property dealings of the accused No.1. The father of deceased has filed affidavit (Exh. 66) that he has danger to his life from the accused, if released on bail. He has further submitted that he is receiving threats and therefore, he has lodged N.C. Report No. 593/2022 and there is every possibility of tampering with the prosecution witnesses. Merely because the charge sheet is filed, the accused No. 8 is not entitled for grant of bail in such type of serious offence. Therefore, considering the seriousness and gravity of the offence, the larger interest of the society, the accused No. 8 is not entitled for grant of bail. The possibility of tampering with the witnesses and commission of another offence cannot be ruled out. Therefore, the Bail Application deserves to be rejected. Hence, I proceed to pass the following order.

ORDER

- 1) Application is rejected.
- 2) P & D. in the open Court.

Date: 01.12.2022

(R. B. Rote)
Additional Sessions Judge, and
Special Court, Latur.
