



CNR No.MHLA010035842022.

ORDER BELOW EXH. 7 IN Spl.C. NO.84/2022

(State Vs. Narayan)

1. The accused No. 11 Ajitsingh s/o Raghuvirsingh Gaherwar 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. 14 & 15. Heard learned counsel Shri D.D. Patil for accused No. 11 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. It was revealed that on 31.05.2022 the accused No. 1 came to Aurad Shahajani, Tq. Nilanga and the applicant had harbored him. 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. 11 is that he harbored the main accused by providing vehicle and financial assistance knowing that he had committed serious offence of murder and he has absconded from police custody. 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. Initially the applicant was enlarged on bail as per the order of Additional Sessions Judge-4, Latur. After invoking the provisions of offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act against the accused the permission was obtained to arrest the applicant. Accordingly, the applicant came to be arrested on 06.08.2022 in connection with the offence punishable under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act. The earlier bail

application filed by the applicant Cri.Bail Application No. 384/2022 has been rejected on 16.06.2022.

5. Learned counsel for the applicant has submitted that the applicant has not committed any offence. He has been falsely implicated in this case on the basis of the statement of co-accused. The offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of MCOC Act is not attracted against the applicant. He is concerned only with the offence under Sec. 212 and 216 of I.P.C. which is bailable offence. The applicant has no criminal antecedents. The applicant was not involved in the main incident. There is no record to show that the applicant is member of organized crime syndicate. Police has seized the vehicles of applicant. The investigation is completed and the charge-sheet is filed. There is no any offence registered against the applicant before the instant crime either in individual capacity or with co-accused. He has not helped the main accused in any way. He is the principal of Master Dinanath Mangeshkar College, Aurad Shahajani. The applicant is ready to co-operate investigating agency and obey the orders of the Court. The applicant is heart patient and he was taking treatment. 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 **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, Nagpur]** and **Dinesh Bhondulal Baisware Vs. State of Maharashtra [2016 Law Suit (Bom) 989, High Court of Bombay (Nagpur Bench)]**.

6. Learned P.P. 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 has helped the main accused, when he was absconding by providing vehicles and economic assistance. He was present with the main accused at the time of purchase of land. The main accused had given economic aid for opening a school. The present accused knowing that the accused No. 1 was absconding, harbored him. If the applicant is granted bail, there is possibility of tampering with the witnesses. Therefore, learned P.P. prayed for rejection of the application.

7. 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 role of accused No. 11 is that he has allegedly harbored the main accused No. 1 Narayan Irbatanwad, when he was absconding by providing his car and motorcycle and that he was in contact with the main accused. It is pertinent to note that no involvement of present accused is shown in the alleged conspiracy dated 12.03.2022 taken place 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 offence under Sec. 212 and 216 of harboring the main accused. 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 applicant was arrested in connection with Cr. No. 97/2022 under Sec. 302, 212 and 216 of I.P.C. and he was granted bail in Cri. Bail Application No. 384/2022 on 16.06.2022. After invoking the provisions of the offence under Sec. 3(1)(i), 3(2), 3(3) and 3(4) of the MCOC Act he again arrested. There is nothing on record to show that after granting bail to the applicant, he has misused the liberty. The vehicles are already seized from the accused. The applicant is serving as a principal of a College. No criminal antecedents are shown against him. He is heart patient of the age of 49 years. 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.”

8. According to the prosecution, the role of applicant is only that he harbored the main accused by providing vehicles and financial assistance. According to applicant, he has not committed any offence. The applicant has not misused the liberty granted to him, when he was released on bail. 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. 11 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. 11 Ajitsingh s/o Raghuvirsingh Gaherwar, 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.