



: Order below Exh. 2 in Spl. Case No. 304/2023 :
(CNR : MHAH010076932023)

Akash Pandurang Shinde Vs. State of Maharashtra

This bail application is taken out by the above named applicant/accused under Section 439 of the Code of Criminal Procedure to enlarge him on bail. Police Station, Rahuri, has arrested the accused in Crime No. I 641/2023 for the charges punishable under Section 395, 394, 364(A), 427, 341, 325, 504, 506, 34, 120(B) of Indian Penal Code; Section 4/25 of Arms Act and Section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, (for short the MCOC Act). Applicant / accused since the date of arrest i.e. on 29.03.2023 has been lying in the Judicial Custody.

2] In short the case of the prosecution is that, on 12.06.2023 complainant Anil Ghadage was having cash of rupees three lakh with him and he obtained rupees six lakh by way of hand loan. Thereafter, at 8.30 p.m. when he was proceeding by his car towards Rahuri with his car driver at 9.30 p.m. near Petrol Pump at Mula Dam Phata one silver/white Car came across his Brezza car. Four persons get down from that car having their faces covered and armed with scythe. Out of them, one person broken driver side rear window glass and opened the door. Then driver of his car was forcibly taken away and made to sit by his side and to their either side two persons sat and remaining two sat on front seat. Then those persons taken search in his bag and taken away cash amount of Rs. 9,00,000/-, his gold chain, gold ring and after roaming in the car for half and hour their clothes were taken

away and they were taken down from the car. They were beaten by hard and blunt object. Driver was also beaten by fist and kick blows. They further told that they had taken contract to kill him and asked him to give more amount by calling it through his friends, brothers, etc. otherwise they will kill him. Thereafter, again they were made to seat in the car. One tape was tied on their eyes and ordered not to remove it for next ten minutes and then they left from that spot. Thereafter, complainant went to Rahuri Police Station and lodged report. Accordingly, this offence came to be registered. Accordingly, this offence came to be registered. The applicant was arrested on 17.06.2023. From 17.06.2023 to 23.06.2023 he was remanded in P.C.R. now he is in M.C.R.

3] Ld. advocate appearing for the applicant - accused no. 6 has submitted that the first bail application has been rejected only on the basis of FIR, remand papers, investigation was pending and there was proposal to apply the MCOC Act against him. Now, the investigation is over and charge-sheet being filed, the application can be heard on merit. It is submitted that initially the crime was registered to have committed the offence punishable under Section 394 of Indian Penal Code. During investigation Section 395 of Indian Penal Code and offence under the Arms Act have been added. The alleged incident is dated 12.06.2023 and matter came to be reported in late night on 13.06.2023. Learned Advocate then brought to my notice the contents of the report, which is against four persons. But surprisingly, no description of the assailants has been stated by the informant. On 16.06.2023, the P.I. of LCB received the secret information that some persons gathered near Shirdi and out of it four

were caught hold and those are accused no. 1 to 4. Those were interrogated and they disclosed the names of accused no. 7 and 8 who ran away from Shirdi. However, they didn't disclose the name of accused no. 6 about his involvement in the crime. His name is also not there in the memorandum / recovery panchanama under Section 27 of the Indian Evidence Act. The proposal to apply the MCOC Act is dated 23.08.2023 and which has been accepted on 07.09.2023, only on the basis of crime history mentioned in the proposal. In all 22 cases were shown against the applicant accused. Out of it, 9 cases are under the different charges. Only on the basis of said list the final sanction to apply the MCOC Act has been granted on 24.11.2023. learned Advocate has submitted that the applicant is resident of Vilad. There might be person in the similar name Akash Shinde at Vilad. Police obtained online data addresses of the persons in the name Akash Shinde. The applicant is accused only in three cases. He has already been acquitted in two cases. One case is pending which is registered with the Police Station, MIDC in Cr. No. 290/2021 and recently charge-sheet has been filed in the said matter. Those three cases are including in the list of 12 cases in the proposal for MCOC Act. Learned Advocate has submitted that he has produced the copies obtained from CIS pertaining to those cases. It is further submitted in the present crime there is no recovery against him. Only amount Rs. 2000/- shows to have been recovered. No memorandum panchanama for recovery of cash amount Rs. 19,500/- has been made in respect of the accused. Rs. 17,500/- has been recovered when he was arrested and Rs. 2,000/- came to be recovered lateron. Cash has been recovered from his house from pant. However, it is nowhere stated

that the house which in occupation by the applicant has been searched out. No statement of the member of Grampanchayat or neighbour that it is the house of applicant, has been recorded. Mahesh is co-accused and Ravindra is supervisor of Mahesh. On 16.06.2023 Mahesh transferred Rs. 80,000/- in account of Ravindra, who withdrew Rs. 80,000/- from different ATM and handed over the said money to the police. The said recovery of Rs. 80,000/- is shown to have been recovered from different accused persons. It is the false and forged recovery against co-accused persons. In report there is reference of silver coloured car having no number plate as involved in the crime. Contrary to it, the Duster car owned by accused no. 5 though is silver coloured came to be recovered but the same having the number plate. As such false allegations are made in FIR as unnumbered vehicle has been involved. In the CCTV Footages the applicant has not been shown to have been involved. No test identification parade has been taken till the date. The cash subject of crime is around One Lakh and more. Gold chain has been recovered from accused no. 5. Till the date, informant has not stated that it is his chain. There is no iota of evidence against present applicant. He is in custody for a period over three months. It is nowhere brought on record that applicant is member of any gang / syndicate. Applicant is 32 years old. His wife and mother are dependent upon him. Trial will take its own time to commence and conclude. He is ready to abide all terms and conditions even ready to stay outside the jurisdiction of the present Court. To support his submission he relies upon -

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| 1) | <i>Shri. Girish Kumaran Nayar Vs. The State of Maharashtra, 2021 ALL MR (Cri) 1409;</i> |
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2)	<i>Mangesh Manik Kanchan and Anr. Vs. State of Maharashtra, 2016 (1) Bom. C.R. (Cri.) 350;</i>
3)	<i>Dagu Badud Bhosale Vs. The State of Maharashtra, Bail Application No. 1968 of 2022</i>
4)	<i>Sonu @ Sandeep Mohan Duggal Vs. The State of Maharashtra, 916 Bail Application No. 629 of 2021</i>
5)	<i>Nanna @ Ajit Gujraj Savani Vs. The State of Maharashtra, Bail Application No. 1340 of 2023</i>
6)	<i>Bhimraj Genu Avhad Vs. The State of Maharashtra, Bail Application No. 1741 of 2023</i>
7)	<i>Deepak Madhavrao Mankar Vs. State of Maharashtra, Writ Petition No. 1670 of 2019</i>

4] On the other hand Ld. APP appearing for the State has submitted that applicant accused is involved in serious crime punishable under Section 395 of Indian Penal Code. He is habitual and therefore it was proposed by the Investigating Officer to apply MCOC Act against him. The same proposal came to be accepted on 07.09.2023 and MCOC has been applied against him. Earlier he had been released in the crime and the said bail came to be cancelled and lateron he came to be arrested under the MCOC Act. There is every possibility of tampering with the evidence and threatening the witnesses.

5] Learned Advocate appearing for the informant has submitted that the citation by on behalf of applicant are not applicable in the matter. He is behind the bar only for 6 months. Those citations

are in respect of different facts of the case. Informant has been brutally beaten. Applicant is involved in serious crime. So, he strongly opposed the bail application.

6] It is contention of the State that accused no. 5 Kiran Kolape is the leader of the syndicate and under his leadership, the alleged serious crime has been committed wherein informant has been seriously injured. It cannot be disputed that informant has been seriously injured. Apart from it, the involvement of the applicant in 12 cases cannot be disputed as the list of all those crime has been given before the Court of Magistrate during remand dated 23.06.2023. Notably, the applicant accused came to be arrested on 17.06.2023 within five days of the incident. The list of crimes shows his involvement in the offence of committing robbery and dacoity at least in four cases, the Cr.No. 163/2014 of Police Station, Daund, Pune; Cr. No. 249/2015 of Police Station, MIDC, Ahmednagar; Cr. No. 57/2016 of the Police Station, Nagar Taluka, Ahmednagar and Cr. No. 290/2021 of Police Station, MIDC, Ahmednagar.

7] The involvement of the applicant -accused in the present crime is based upon his memorandum and discovery panchanama under Section 27 of the Indian Evidence Act. Notably, at the time of his arrest immediately after three days of the incident he was found in cash Rs. 17,500/-. He has not given any account how the said money came to be recovered from him. Importantly, there is recovery of gold chain weighing two tolas from the Kiran Baban Kolape, the leader of the gang – syndicate. Importantly, the accused – applicant Akash

Shinde came to be arrested on 16.06.2023 having received the secret information to the Local Crime Branch, Ahmednagar. Accused no. 6 has also produced the Bajaj Pulsar Motorcycle alleged to be used by him in the said crime and the applicant was seen in the company of the main accused Kiran Kolape on 16.06.2023. He couldn't explain his presence with him. Thus, there is prima facie evidence against applicant accused being the member of syndicate in dacoity. Applicant was involved in carrying the informant to Ahmednagar Kalyan bye-pass road. While going to Ahmednagar to Kalyan bye-pass road, the applicant Akash Shinde was in the Duster (four wheeler of the accused no. 5 Kiran Kolape). Thus there is sufficient evidence of the involvement of the applicant in the serious crime. Recovery of amount of Rs. 17,500/- also corroborate the case of prosecution. There is no reason to dispute that accused had carried the police to his house only for the recovery of the money Rs. 2,000/- involved in the crime. Apart from it, there is list of crimes in which applicant – accused shown at least in four crimes of similar kind related to dacoity and robbery.

8] There cannot be any quarrel with the proposition laid down by Hon'ble High Courts relied upon by the learned Advocate for the applicant. In the case of **Girish Nayar** the accused was in custody of four years, he had been released on bail. In the case of **Mangesh Manik**, there was no *ioto* of evidence of conspiracy. Notably, in our case there is evidence to show that accused was also present with the members on Nagar – Kalyan road where the applicant was taken. Beside it, he has not given the account of amount recovered from him on his arrest. In the case of **Dagu Bhosale** the applicant was acquitted

in the robbery cases pending against him. However in the matter in hand, the robbery and dacoity cases are still pending against the accused. In the present case the continuous involvement of the accused is shown in the crimes, as laid down in the case of **Sonu @ Sandeep Duggal**. In the case of **Nanna @ Ajit Savani** and **Bhimraj Avhad** the accused have not been shown to have involved in the offence of robbery and dacoity, in which the present applicant is materially shown to have been involved. In the case of **Dipak Mankar**, the applicant – accused was the accused of the offence punishable under PMLA Act.

9] Thus, there is reason to believe the accused being the member of syndicate is also involved in the crime. There is every possibility of repeating the crime of the like nature if he released on bail. Accused is therefore not deserved for bail. Hence following order-

: ORDER :

- (1) Applications (exh. 2) is rejected.
- (2) Application is disposed off accordingly.

Date : 19.12.2023
Ahmednagar.

(M.A. BARALIYA)
Special Judge (MCOC Act),
Ahmednagar