

MHAH010076932023



Special Case No.304/2023
State of Maharashtra Vs Mahesh
Vitthal Wagh

Order below Exh.23:
(Delivered on : 07.03.2024)

- 1) This is an application for regular bail under section 439 of the Code of Criminal Procedure, 1973 in Crime CR.No.I-641/2023 dated 13.06.2023 registered with Rahuri Police Station, Tal. Rahuri, Dist. Ahmednagar, for the offences punishable under section-394, 395, 364(A), 323, 341, 427, 504, 506 r/w 34, 120B of the Indian Penal Code, 1860, under Section-4/25 of Arms Act, under Section-37(1)(3)/135 of the Bombay Police Act and under Section-3(1)(ii), 3(2), 3(4) of MCOC Act.
- 2) The applicant contended that he was arrested on 17/6/2023. He was remanded to PCR till 21/6/2023. thereafter he was remanded to MCR. He had filed bail application no. 1008/2023 which was allowed. Subsequently the MCOCA was imposed in this offence and he was again arrested on 24/1/2024.
- 3) The applicant further submits that he was remanded to PCR till 29/1/2024. since then he is in jail. The sections are wrongly imposed. He was earlier released on bail. He did not violate the terms and conditions of bail. Nothing was discovered or recovered from him. Eight persons are arrested, whereas there are 10 accused. Considering the FIR and the material in the case, the present applicant is not involved. The accused was made to sit in the vehicle by the other accused. The applicant is reputed labour contractor. He has no criminal antecedents. He has permanent

residence and property at the address given. He is ready to abide by the terms and conditions of bail.

4) The prosecution submitted reply (Exhibit 30) opposing the application on the ground that complainant is a contractor of electric light. On 12.06.2023 after withdrawing cash of Rs.9,00,000/- for the personal purpose,he was proceeding on Nagar-Rahuri road. At Mula Dam Phata,one four wheeler obstructed his way and robbed him of cash as well as gold chain and gold ring worth Rs.10,20,000/- by assaulting him and his driver.

5) The prosecution further alleges that, Investigating Officer sent a proposal to Special I.G. for approval under Section-23(1)/1(a) of MCOC Act. The same was granted on 07.09.2023. Accused No.1 to 10 are all criminals, having serious crimes registered against them. The present accused is deeply involved in the crime. Considering the nature of offence, as accused is engaged in organized crime, his application may be rejected.

6) After hearing both the parties, having gone through the case papers, the complaint shows that, when the complainant was proceeding with the said cash in one Brezza car. One white color car carrying four persons put their vehicle across the vehicle of complainant. One of the person broke the window of the car and pulled out driver to make him sit besides complainant. Two persons sat on the front side of the abducted car and two persons sat besides the driver and complainant, by covering their eyes with a cloth patti. Thereafter, they took away Rs.9,00,000/- from the bag, gold chain and ring of the complainant. They wandered for half an hour and took the complainant to a place. There the complainant was assaulted with belt and hard object. The driver was also assaulted with kick and boxes. They were saying that, they had taken a

contract to kill the complainant. They demanded more money. Finally they said that, only after ten minutes he should remove the patti tied around his eyes. When the complainant removed said patti, he came to know that he was released at Wambori Ghat.

7) During the investigation it was found that, the accused including the present accused, had organized a crime syndicate and engaged in similar type of offences, with an intention of gaining illegal pecuniary gain.

8) As far as the present accused is concerned, the allegations in the charge-sheet are that accused No.1 Yogesh Kharat is the gang leader ,whereas the present accused is the member of that gang. There were near about five offences, in last ten years and near about total 18 offences were revealed against these accused, in which they were said to be involved.

9) During investigation from the present accused, a mobile phone and cash of Rs.18,500/- were seized.

10) According to the advocate for complainant, the present applicant/accused was an associate of a police personnel and engaged in criminal activities, thinking that no one can do anything against them. On a busy road the abduction and robbery was done, which shows that with the help of police , this accused acted, which is a serious offence.

11) The investigation also shows that, the CCTV footage of the relevant period shows that, said duster car of accused, was following the vehicle of complainant. It was found that accused No.1 Yogesh, No.2-Anil, No.3-Guddu @ Sagar, No.4-Sonu @Sonya, No.5-Kiran, No.9-Dhananjay and No.10-Mayur were following the vehicle of complainant by their duster vehicle. Accused No.9 Dhananjay broke the window of complainant's car. Accused No.1 to

3 and 9 and 10 entered the vehicle of complainant and took possession of complainant and his driver, to abduct them. Accused No.5 Kiran was driving the vehicle following the car of complainant. They took the complainant to Nagar-Kalyan bye-pass road. Accused No.6 Akash and No.7 Mahesh (Applicant) were sitting in the car driven by present accused No.5. They took complainant and his driver to Pimpalgaon Malvi. Accused No.4 Sonu @ Sonya and No.8-Sonu @ Shubham came on motorcycle to that place. They took out belt and assaulted the complainant. The accused No.5- Kiran had instructed all the accused to cover their faces by handkerchief. He also gave five mobile, the SIM numbers of which were in the name of different persons, to the accused for their use. Accused No.6-Akash and No.7-Mahesh used iron katti while committing the offence.

12) Consequently during the investigation, the above mentioned material was seized. It was also found that against accused No.5 Kiran present offence and offence No.183/2022 under Section-376(2)(n),420, 494 r/w 34 of the Indian Penal Code is pending. Against accused No.1 Yogesh Kharat there were nine crimes registered at Kopargaon, Loni, Shirdi and Rahuri. Accused No.2-Anil and No.3 Guddu @Sagar are facing the trial in the present offence. Accused No.4-Sonu @ Sonya was booked in four offences registered at Shirdi,Rahata and Rahuri Police Station respectively. In which two are relating to murder. Against accused No.6-Akash there are twelve offenses registered at various police stations which includes Daund, MIDC, Nagar Taluka, Tophkhana and Rahuri. Most of them are relating to robbery and dacoity. Accused No.7 Mahesh and No.8 Sonu @ Subham Thombe are facing the trial in this crime. Accused No.9-Dhananjay is facing

trial in seven offences registered with police stations at Kopargaon, Loni and Rahuri. Accused No.10 Mayur is booked in three offences including the present offence and two offences at Kopargaon city.

13) It is apparent on face of record that, the present applicant was deeply involved with all other accused, who were booked in serious offences like theft, murder, robbery and attempt to commit murder. The Special I.G. did not seem to have mechanically granted sanction, but after going through the record of the other accused and the present accused, came to a reasonable conclusion that, it is major crime syndicate. The photograph of the complainant who had sustained serious injuries shows that, he was mercilessly beaten on various part of the body.

14) The involvement of the present applicant, with criminals having a vehicle erasing its number, providing mobile phones to various accused, clearly indicates that he had formed an coterie of criminals to loot and rob the persons having money. If the police personnel, who has a duty to protect the citizens, is involved in such offences and is assisted with criminals on record, it makes the offences more grievous.

15) The prosecution submitted reply below Exh-30 opposing the application alleging that the accused NO.7 is involved in very serious crime.

16) The learned advocate for accused relied upon judgment of the Hon'ble Bombay High court in case of **Shharukh Alias Kasai Shaikh Akram Vs. State of Maharashtra** reported in **2024 (1) ABR (CRI) 511** wherein it is held that when there was no material to show that, he had committed offence as member of organized crime syndicate, all offences registered against accused were in his individual capacity.

Investigation papers did not indicate that, he has committed offences to gain economic gain and pecuniary benefits or other advantages for himself or any other person. There was certainly reasonable grounds to hold that applicability of MCOC Act was doubtful. Hence accused was held to be entitled to bail.

17) The learned advocate for complainant relied upon the judgment of the Hon'ble Supreme Court in case of **Zakir Abdul Mirajkar Vs. The State of Maharashtra and Ors.** reported in **2022 LiveLaw (SC)707** wherein it was observed that More than one charge sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate. Under section 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999 the order of approval need not name every accused person at the outset. Section 23(1)(a) MCOCA speaks of recording information about the commission of an offence of organized crime, and not of recording information about the offender. The competent authority may record information under Section 23(1)(a) once it is satisfied that an organized crime has been committed by an organized crime syndicate. Under Section 3(2) those accused abetting the commission of organized crime need not themselves be charged with committing a cognizable offence punishable with imprisonment of at least three years. They need only be abetting those who are guilty of committing a cognizable offence punishable with imprisonment of at least three years, which offence amounts to an organized crime.

18) Thus, in the instant case, it is apparent that though the applicant do not have criminal antecedents, he had sided with hardened criminals in this act. Therefore even if there are no

criminal antecedents or registered crime against this applicant, his involvement in crime syndicate shows that he is a hardened person. The investigation and charge-sheet further shows that ,the chain which was seized was belonging to the complainant and it was ultimately handed over to him by the police, on his identification.

19) There is every possibility of the applicant absconding,threatening the witnesses, interfering with the trial and commission of serious offence through organized syndicate. As the charge-sheet is filed having sufficient material against him, to warrant conviction, consequently the applicant is not entitled to any relief. Hence, the following order;

ORDER

The Application at Exh-23 is hereby rejected.

Date : 07.03.2024
Place : Ahmednagar

(**Niranjan R. Naikwade**)
Additional Sessions Judge,
Ahmednagar JO Code-MH01063