

**Special MCOCA Trial No.11/2023.**

(CNR-MH-AK-01-000435-2023)

The State of Maharashtra .Vs. Suhas Wakode and Others.

**Order Below Exh.36.**

**( Dated : 06.11.2023.)**

Accused No.6 Sonu @ Vishal Sunil Mandirkar has sought bail under Section 439 of Cr.P.C. in connection with C.R.No.357/2022 (Spl. MCOCA Trial No.11/2023) registered with Civil Lines Police Station, Akola for the offences punishable under Sections 302, 120-B, 143, 201 r/w 34 of the Indian Penal Code, 1860, under Section 4 r/w 25 of the Arms Act, 1959 and under Sections 3 (1) (i) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organised Crime Act (for short 'MCOCA Act'), 1999.

**02.** Brief facts of the prosecution case are as under :

On 14.08.2022, informant lodged FIR. Deceased Vinod was his brother. On 13.08.2022, at about 9-40 p.m., informant, his sister-in-law, two nephews were present in their hardware shop. Deceased was approaching on motorcycle. Accused Suhas Wakode stopped him in front of Deepika Grocery Shop, Chikhalpura, Kharap Road, Akola. Informant saw that, accused was stalking with the deceased when co-accused approached from backside and dealt blows of sword on Vinod's back. Thereafter, accused Suhas dealt blows of big knife on the person of deceased. Both dealt blows of aforesaid weapons all over body of deceased. Aforesaid two accused were accompanied with two more persons. Informant and others rushed to the spot. Vinod was lying in injured condition. They took him to Government Hospital where the medical officer declared him dead. FIR was registered as stated above.

**03.** In the course of investigation, identity of co-accused was discovered. Accused was arrested on 14.08.2022. Since then, he is in custody.

- 04.** The State has opposed bail application on various grounds.
- 05.** Learned Adv. K.M.A. Husain for the applicant has submitted that, this is first bail application of the accused since his arrest. His name is not mentioned in FIR nor any role is attributed to him in alleged assault. Witnesses mentioned in FIR do not state his name as one of the assailants though he was arrested on the same day of FIR. No witness gave identification/description of this accused. On the basis of CDR, it is claimed that this accused called the deceased on the spot of incident. In fact, the accused is not instrumental in calling the deceased, but he himself came to the spot. There is nothing to show nexus between present accused with co-accused on the day of incident. No charge-sheet is pending against the present applicant, so, provisions of MCOC Act are not applicable. Shri. Husain has relied on the order of bail granted to co-accused Darshan by Hon'ble Bombay High Court. Confession statement is already retracted by the accused. So, it is not his statement. The accused flatly denied of giving statement under Sec.164 Cr.P.C. when he was taken to the Magistrate. So, value of statement recorded under Sec.18 is diminished. No incriminating material is seized at the instance of accused. Applicant is local resident. He is ready to abide by conditions of bail.
- 06.** Learned Special P.P. Shri. R.R. Deshpande has submitted that, the offence is serious. Main offence is of murder involving criminal conspiracy with addition of MCOC Act. This accused is part of criminal conspiracy which resulted in alleged murder. Prosecution claims presence of the accused on the spot. Few witnesses gave statement to the police showing presence of the accused on the spot. His blood stained clothes are seized in the investigation. Conversation between the deceased and present accused on cell phones shows that, accused called the deceased on the spot.

His voice samples are collected and sent to Forensic Science Laboratory. There are 24 injuries found on the deceased. Present applicant is equally responsible. He resides in the same area where material witnesses reside. There is sufficient material on record to prima facie hold that, accused is not entitled for bail.

**07.** When MCOC Act is involved, general provisions of Cr.P.C. like 167 and 439 are applicable in modified form. Sec.21 (4) lays down two conditions for granting bail to the accused who is in custody. Firstly, to give opportunity to the Public Prosecutor to oppose the application and secondly, when learned P.P. opposes the application, the Court is 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. So, when learned P.P. has in fact oppose the bail application, the Court has to consider twin rider in the form that it shall prima facie come to the conclusion that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. If both conditions are fulfilled then only bail can be granted to the accused.

**08.** Competent authority granted sanction for prosecuting the accused persons under Sections 3 (1) (i) (ii), 3 (2), 3 (4) of MCOC Act. The sanction was granted on 23rd January 2023 against total seven accused including present accused Sonu @ Vishal Mandirkar. While according sanction, the competent authority considered that six accused including present accused formed organised crime syndicate with Suhas Wakode, the leader of alleged organised crime syndicate for committed offences against persons and property with intention of gaining illegal pecuniary gain or other advantages by use of violence etc. The sanction makes it clear that, more than one charge-sheet have been filed against Suhas Wakode, the

leader of alleged syndicate and members Ganesh Kaitle and Hritik Borkar as required. Such charge-sheets have been filed in respect of offences alleged to have been committed singly or jointly with other accused in preceding 10 years of commission of instant crime and the competent Courts have taken cognizance of such offences. It is settled view that filing of such charge-sheets is not required against each and every member of the alleged crime syndicate. Prima facie, it appears that competent authority granted sanction for prosecution on application of mind.

**09.** Shri. Husain has relied on the bail order passed in favour of co-accused Darshan Nandagawali by Hon'ble Bombay High Court in Criminal Appeal No.43/2023, dated 06.06.2023. After careful perusal of the said order, it becomes clear that Hon'ble High Court found fault in the procedure adopted by the prosecution seeking extension for investigation time after 90 days. Hon'ble High Court came to conclusion that, the Special Court granted extension Under Sec.21 (2) on two occasions without proper appreciation and as such the extension was found illegal. On this premise, Hon'ble High Court granted bail to accused Darshan extending benefit of Sec.167 (2) of Cr.P.C. Thus, the bail order of accused Darshan is passed on totally different set of facts and present accused can not take benefit of the said order since charge-sheet is already filed and present application requires to be consider on the touchstone of Sec.21 (4) of MCOC Act.

**10.** Learned Special P.P. Shri. Deshpande has submitted that, as many as 24 injuries are found on the body of deceased on vital body parts. In column No.17 of Postmortem Report, total 24 injuries are mentioned. Injury No.24 is multiple incised chop wound which in fact is constituted by seven different wounds. There are five injuries on head, neck and face. There are three injuries on upper limbs. There are five injuries on chest and

nine injuries are on abdomen. 27 multiple incised chop wounds are found over left side of back apart from the injuries mentioned above on right side of back. FIR itself shows that, alleged assault was committed using deadly weapons like sword and big knife. The nature of assault and injuries found on the deceased are self explanatory. The intention of the assault is writ large and it is elimination of the deceased from this world.

**11.** It is necessary to consider the material available on record against the present applicant. It is the foremost allegation of the prosecution that, present accused is instrumental in bringing the deceased on the spot so that deadly assault could be committed as per the criminal conspiracy. Investigation papers show that, information was received from present accused that he made phone call to the deceased from his cell phone bearing No.9607888532 between 9-00 p.m. to 9-40 p.m. and called the deceased near his home. On this basis, contents of the seized cell phone of the deceased were checked on 19.08.2022. In recorder application of the cell phone, one call record audio clip of 31 seconds was found regarding conversation between present accused and the deceased. (The call originated from aforesaid cell phone number of the accused.) The conversation shows that, present accused expressed intention to talk and meet the deceased in connection with some land matter. Deceased asked the accused to come and meet him near his home since he was proceeding to his home. The accused ascertained whether the deceased was approaching towards his home and the deceased affirm the same. So, even if the defence has argued that the accused did not call the deceased near his home, it is quite clear that, the accused certainly ascertain location of deceased and confirmed from him that the deceased was about to reach his home. Voice sample of the accused is collected during investigation. The disputed clip and voice sample are sent for forensic examination. It is

pertinent to note that, the deceased was intercepted by accused Suhas Wakode and others on his way to his home where the alleged assault took place and led to the murder. Thus, the present accused played important role in the alleged assault by confirming from the deceased that he was approaching to the spot of incident on his way to the home.

**12.** Statements of several witnesses are recorded. Their names are not disclosed in this discussion. Some of the witnesses are close relatives of the deceased. Supplementary statement of informant and statements of other close relatives of the deceased show that, present accused Sonu @ Vishal and few other co-accused reside in the same locality where the witnesses reside. So, they know some accused including present one by their names. In such case, there is no question of identification of the accused persons. Still, test identification parade was carried through some of the witnesses. Present accused was identified by the informant as well as wife of the deceased and few more witnesses in T.I. Parade.

**13.** From the police statements of few witnesses, it is revealed that few days prior to the present incident, accused Suhas Wakode came out of jail. Eight days prior to the incident, he, present accused and other co-accused went to the home of deceased. Suhas threatened to kill the deceased. Thus, intention to kill the deceased was expressed by accused Suhas in the company of other co-accused.

**14.** Accused Sonu @ Vishal was arrested on 14.08.2022. On the same day, his shirt and pant were seized. There are blood stains on both garments. Blood samples of the accused are collected. Forensic examination report is yet to be received, but that could be one of the incriminating evidence. Thus, apart from this evidence, there are statements

of witnesses showing presence of accused Sonu on the spot. Cell phone conversation shows that, he ascertain from the deceased his movement and this information is instrumental in effecting deadly assault on the deceased. The accused was identified by four witnesses in T.I. Parade. Thus, there is ample evidence to prima facie establish nexus between the accused and the offence. Considering aforesaid discussion, it can not be said that there are reasonable grounds to believe that the accused is not guilty of such offence as contemplated in Sec.21 (4) (b) of MCOC Act. Even otherwise, there is prima facie evidence to show involvement of present accused in the assault and being part of criminal conspiracy to kill the deceased.

**15.** In view of aforesaid discussion, I come to the conclusion that, this is not fit case to grant bail. Hence, following order.

**ORDER.**

The application is rejected.

Sd/-

**(A. D. Kshirsagar)**  
Special MCOCA Judge,  
Akola.

Akola.  
Date : 06.11.2023.

**Certificate**

I certify that the contents of this PDF file are word to word as per Original Judgment/order.

Name of the Steno : Anil D. Bais.  
Name of the Court : Court of District Judge-1 & Addl. Sessions Judge, Akola.  
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Sd/-  
Stenographer (Gr-I)