

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

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

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

**Order Below Exh.62.**

**( Dated : 30.04.2024.)**

Accused No.4 Hritik Sudhir Borkar 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 talking 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 01.11.2022. Since then, he is in custody.

**04.** The State has opposed bail application on various grounds.

**05.** Learned Adv. Dildar Khan 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. There is no recovery from him. Witness statements showing involvement are vague. There is no prima facie sufficient evidence to detain the accused in custody. There is no previous charge-sheet in the nature of organized crime syndicate. Sanction does not show that there is previous charge-sheet of such nature. Section 21 (4) (b) Second part is ultra virus. There is no proper compliance while recording confession. So, confession evidence can not be considered. There is no record to show that accused is member of syndicate, so provisions of MCOCA Act are not applicable. 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 MCOCA Act. This accused was present on the spot and witnesses saw him. Few witnesses gave statement to the police showing presence of the accused on the spot. There are 24 injuries found on the deceased. Present applicant is equally responsible. There are 15 cases filed against the accused. For application of MCOCA Act, it is not necessary that every member must commit crime. Members of syndicate get changed from time to time. Pecuniary benefit is not the sole aim, but crimes can be committed to establish supremacy in the area. He has invited my attention to bail orders in favour of the accused and proximity of offence with end of detention. There are chances of tampering and committing further offences. There is sufficient material on record to prima facie hold that, accused is not entitled for bail.

07. Shri Dildar Khan has relied on few citations. First is decision of Hon'ble Bombay High Court in **Girish Kumaran Nayar .Vs. The State of Maharashtra, 2021 ALL MR (Cri) 1409**. In the reported case, Hon'ble High Court observed that, nexus between past criminal activities and present crime was not established. Bail was granted as the accused was in custody for 04 years and trial was not likely to commence in near future. He has next relied on the decision of Hon'ble Bombay High Court in **Dinesh Bhondulal Baisware .Vs. The State of Maharashtra, 2016 ALL MR (Cri) 3517**. The said main case was for the offence under Section 307 I.P.C. Hon'ble High Court observed that, previous charge-sheets were not filed as member of crime syndicate. More importantly applicant was acquitted in both previous charge-sheets. On this backdrop, Hon'ble High Court granted bail to the accused. He has next relied on the judgment of Hon'ble Bombay High Court in **Kiran Madhav Hazare .Vs. The State of Maharashtra, 2022 ALL MR (Cri) 1332**. In this case, main offence was under Section 307 I.P.C. Hon'ble High Court observed that, prima facie no case was made out for invoking Section 307. In that case, pecuniary benefit or gaining undue economic advantage was not found. Here learned Special P.P. has submitted that the intention is to establish supremacy in the area. Thus, facts and circumstances of present case are different than involved in reported cases. The accused can not take benefit of the observations.

08. When MCOCA 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 Special P.P. has in fact opposed 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. Shri Khan has submitted that, Section 21 (5) is held ultra virus. He has not submitted any citation on this point.

**09.** 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 Hritik Sudhir Borkar. While according sanction, the competent authority considered that six accused including present accused formed organized crime syndicate with Suhas Wakode, the leader of alleged organized 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. The sanction order shows that previous charge-sheets were filed against present accused Hritik Borkar with the other accused. 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. Co-accused Darshan gave memorandum statement and showed the spot where meeting was held in which conspiracy was hatched to kill the deceased. Present accused took part in the meeting. 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 Hritik Borkar was present on the spot with other co-accused. Other witnesses also saw the present accused while dealing blows with weapon like knife. I have already discussed the injuries found on the deceased. Such brutal assault can be handiwork of more than one person.

**12.** 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. From the statements of some witnesses, it becomes clear that there was rivalry between Suhas Wakode, the leader of syndicate, and deceased Vinod Tobare for superiority in the area. So, gaining supremacy in the area for unlawful activities is covered in the term 'other advantage' mentioned in the definition of 'organised crime'.

**13.** Say filed by the police shows that, 15 previous offences relating to property and violence are registered against accused Hritik. It appears that, some of the offences were registered when he was child in conflict with law. Therefore, all previous antecedents do not find on record. Learned Special P.P. has invited my attention to some material aspects. He has submitted that, in S.T. Case No.38/2023, accused was granted bail on 03.08.2021. The case is pending. In another case R.C.C.No.1080/2021, he was granted bail on 16.06.2021. Thus, the accused committed present offence while on bail in previous two cases. Learned Special P.P. has further submitted that, the accused was detained till 06.08.2022 under MPDA. This offence took place on 13.08.2022. It means the accused is involved in present offence just after one week after end of his detention.

**14.** 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. Furthermore, there is likelihood of involvement in similar offences and tampering with witnesses if accused is granted bail as appears from his previous conduct.

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.

Akola.  
Date : 30.04.2024.

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

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)