

ORDER BELOW EXH-201 IN SPECIAL CASE NO. 172/2021
MHKO010027232021

(State of Maharashtra Vs. Rushikesh @ Gendya Babaso Chaugule & ors.)

1. By way of present application under section 439 of Criminal Procedure Code, applicant/accused Rushikesh @ Gendya Babaso Chaugule has prayed for regular bail in CR No.I-123/2021 registered with Rajarampuri police station for the offence punishable under Section 307, 323, 143, 147, 148, 149, 341, 427, 504, 506 of the Indian Penal Code, under Section 4 and 25 of Arms Act alongwith Section 3(1)(ii), 3(2), 3(4)of the Maharashtra Control of Organized Crime Act, 1999.

2. Perused the application and say thereon. Heard Mr. S.R. Shinde, Learned Counsel for the applicant/accused and Mr. A.A. Mahadeshwar , Learned Special Public Prosecutor for the State.

3. Learned Counsel Shri. S.R. Shinde for the applicant submitted that the applicant came to be arrested in the year 2018. He was granted bail by the Special Court in the year 2021. Thereafter he was attending the Court. When he failed to appear, the applications for exemptions were filed. In this background, an application was filed by prosecution for cancellation of bail. It was filed on 29-6-2024.

4. On that day also the application for exemption was granted. The applicant was enlarged on bail on 2-4-2021. Thereafter he was present in the Court on next date i.e. 15-4-2021. His exemption application was granted on 4-5-2024. The ground for seeking cancellation of bail was registration of one more crime

against the applicant. Though an order of issuance of notice to the applicant was passed, actually no notice was served on the applicant in respect of hearing of the application (Exh.180) for cancellation of bail. He did not file his say to said application. However, suddenly on 13-9-2024 by passing order on Exh. 1 NBW was issued against the applicant. Surprisingly no order was passed below Exh.180 and it was pending for filing say. Therefore, it is clear that the applicant did not get any opportunity of hearing on the said application. Therefore, principle of natural justice have been violated. The further detention of the applicant is not necessary. The applicant is trying to improve and wish to live life of law abiding citizen. Hence, one chance may be given to him.

5. Shri. A.A. Mahadeshar, Learned Special Public Prosecutor submitted that accused was represented by advocate. He was having knowledge about pendency of the application. There is bar of Section 21(5) for grant of bail. The applicant is having criminal background. There are 15 crimes registered against him. He has jumped the bail, which itself is a distinct offence. Hence, application may be rejected.

6. In the present case, the application for cancellation of bail (Exh.180) came to be filed on the specific ground that the another crime has registered against the present applicant bearing C.R. No.333/2024 registered with Rajarampuri police station for the offence punishable U/s. 392 r.w. 34 of the Indian Penal Code. It appears that somehow order about issuance of notice to the

accused was passed. However, admittedly the applicant has filed an application for exemption from his personal attendance on the same day itself. It is bearing Exh.177. Again on next date i.e. on 15-7-2024 another exemption application was filed at Exh.181. Again roznama dated 16-8-2024 shows exemption application (Exh.182) filed by the applicant. It is necessary to mention here that the caption of said roznama shows the matter is listed for “issuance of notice to present applicant”. When the applicant was repeatedly making application for exemption through his advocate, it is clear that he was having knowledge about the case status and the stage of hearing of application Exh.180. Merely because an order of issuance of notice was passed is not contemplated that a separate notice of the same is required to be issued as if he has never appeared in the matter. Once the party is appearing in the matter, it is duty of the party as well to keep track of the matter. Therefore, it can not be said that the applicant was totally unaware about pendency of application (Exh.180).

7. More interestingly the NBW was issued against the applicant not in pursuance to order below Exh.180 but it was issued as per order below Exh.1 dated 13-09-2024. It appears from said order that the present applicant was absent on 2-8-2024, 29-8-2024 as well as on 13-9-2024 without any application for exemption. Therefore, the NBW was issued on altogether different ground than the reasons argued by the applicant. Obviously, when accused would be absent and warrant is being issued on said

ground, the question of opportunity of hearing would not arise. Such warrant used to be issued in pursuance to breach of condition of bail i.e. absent for trial. In such circumstance there is no infirmity in the order. The order does not appear to have been passed below Exh.180.

8. Once it is clear that the order has not passed on Exh.180. It is necessary to consider other grounds. No reasons have assigned by applicant for his absence without making any application for exemption. No doubt, when the applicant has secured his bail in present case on previous occasion, now the question of bar of Section 21(4) of the MCOC Act may not require to be considered.

9. However, the applicant is required to satisfy on other aspects. As mentioned above the applicant has not mentioned any reason for his continuous absence for trial. The trial is being prolonged due to such absence and non cooperation. That the offence is serious and when the applicant is not ready to abide by the bail conditions, he can not be enlarged on bail in present case having allegation of serious offences under the provisions of MCOC Act. Hence, I pass the following order.

ORDER

1. Application (Exh.201) for bail filed by accused Rushikesh @ Gendya Babaso Chaugule is hereby rejected.

2. This application stands disposed off accordingly.

(Dictated and pronounced in open court.)

Date :- 01.07.2025

(Vinod Y. Jadhav)
Special Judge, Kolhapur