

**Order passed below Exh. 7,10,12 in MCOG CASE No. 39/2018**

1) The applicant/accused Surendra Pal (Accused No.3), Shankar Nawle (Accused No.4), Nitin Dangat (Accused No.6) and Sameer Sadavarte (Accused No.7) seek bail under section 439 of Cr.P.C. and 21 (4) of MCOG Act. The applicant and co-accused have been charge sheeted for offenses u/s 302, 307, 120B, 201 of IPC, section 4(25) and 27 of Indian Arms Act, 37(1)(3) r/w 135 of Maha. Police Act and 3(1)(i), 3(2), 3(3) and 3 (4) of MCOG Act, 1999 pursuant to C. R. No. 10/2018 registered with Deccan Police Station, Pune, on the FIR lodged by Atin Deven Shah i.e. son of deceased.

2) Heard Advocate of applicants and Spl. P.P. I have gone through the investigation made so far, reply filed by the prosecution and documents produced by the applicant.

3) According to prosecution case, the deceased Deven Jaisukhlal Shah was reputed builder in Pune City. The applicant Sameer Sadavarte was introduced with deceased by applicant Nitin Dangat somewhere in the 2007-2008 and thereafter applicant Sameer Sadavarte entered into a sale transaction with deceased regarding 400 acres of Land. The Memorandum of Understanding in between deceased and Sameer Sadavarte was executed on 18/04/2018. The deceased and his partners invested about Rs.14.5 cores in the land located at Paud in the year 2008. Thereafter in the year 2012 one more transaction of 152 acrs land occurred in between deceased and Sameer Sadavarte with the help

of Nitin Dangat. Several Cheques were issued from time to time towards satisfaction of transactions. Meanwhile Nitin Dangat withdrew himself from the said transaction, however assisting the deceased and Sameer Sadavarte to complete the transaction. The applicant Nitin Dangat and Sameer Sadavarte had to pay sum of Rs.3 crores and Rs.2.25 crores respectively, to deceased towards advance commission accepted by them. Meanwhile, the known gangster Chota Rajan also intervened and he also spoke with deceased at the instance of Nitin Dangat and Sameer Sadavarte. The outstanding commission amount were not returned to deceased by Nitin Dangat and Sameer Sadavarte. Further more, they both did not keep their promise to transfer the land in favour of deceased. Thereafter, with intention to avoid the monetary liability a conspiracy was hatched to commit murder of Deven Shah. The co-accused Ravindra Chorge and co-accused Rahul Shivthare were provided pistols. On 13/1/2018 at 23.10 hours in the Sayli Apartment, Prabhat Road, Pune, where the deceased was residing, the coaccused Ravindra Chorge and coaccused Rahul Shivthare reached and they were armed with pistols. A message was sent to the deceased to come in the parking slot of the building. The deceased and his son i.e. complainant when reached in the parking slot, several bullets were fired by co-accused Ravindra Chorge and co-accused Rahul Shivthare. Deceased Deven Shah breathed his last within few hours and complainant also sustained bullet injuries.

4) During the course of investigation, the fire arms were

immediately seized. The applicant Surendra Pal arrested on 23/1/2018, applicant Shankar Nawale came to arrested on 26/01/2018 and applicant Nitin Dangat and Sameer Sadavarte were arrested on 22/03/2018. The conspiracy to commit murder of deceased was transpired in the investigation, therefore initially prior approval u/s.23(1) of MCOC Act was obtained and offenses under MCOC Act came to registered against accused persons. After completion of investigation and having regard to criminal antecedents of accused persons, sanction u/s.23(2) of MCOC Act was accorded and charge-sheet came to be filled.

5) The Adv. appearing on behalf of the applicants submitted that, investigation made so far is not sufficient showing involvements of the applicants in the conspiracy. Further more investigation has been completed and charge sheet is filed, therefore there is no need to keep applicants in judicial custody. Ld. Advocates concluded their arguments with submission that, invocation of MCOC against the applicants is bad in law, therefore they need to be enlarged on bail, as applicants are ready to abide by all terms and conditions which Court may deem fit.

6) To substantiate above submission the Ld. Advocate for applicants placed reliance upon following citations.

- a) Ranjiet Sing Sharma V/s State of Maharashtra  
2005 ALL MR (Cri) 1538 (S.C.)
- b) Pohalya Motya Valvi V/s State of Maharashtra  
AIR 1979 SUPREME COURT 1949
- c) Hrishikesh Metre V/s State of Maharashtra

2010 ALL MR (Cri) 1799

d) Sanjay Murlidhar Taralkar V/s State of Maharashtra

2008 ALL MR (Cri) 1842

e) Kailas Kolekar v/s State of Maharashtra

Cri. Bail Application No. 1440/2013 decided on

25/10/2013 by Hon'ble Bombay High Court.

7) Per contra Ld. APP unfolded the investigation on record and submitted that applicant Nitin Dangat and Sameer Sadavarte are architects of the conspiracy. All the applicants have discharged their respective roles in the conspiracy to commit murder of deceased. The investigation prime-facie shows that, murder of deceased Deven Shah was committed to avoid the monetary liability and applicants may continue their unlawful activities in future also, if released on bail. The Ld. SPP concluded his argument with submission that there is every possibility of tampering evidence by applicants, therefore all three applications need to be rejected.

8) The applicant Surendra Pal came to arrested on 23/01/2018. The Pistols used in the crime to commit murder of deceased were found in the house of applicant Surendra Pal. Two pistols, one magazine and seven rounds have been discovered from the house of applicant Surendra Pal at the instance of co-accused Ravindra Chorge. The investigation prima facie shows that despite full knowledge of the conspiracy, the applicant Surendra Pal had given shelter to co-accused Ravindra Chorge and co-accused Rahul Shivthare in his house and also found in possession of weapons

used in the crime. The co-accused no. 9 Abhimanyu is close friend of Surendra Pal and he is not arrested so far. Further more, Surendra Pal permanently resides at Thane and apparently he is habitual offender. Crime No. 88/2018 is registered against him for offenses u/s. 326 504 341 506 of IPC in Kaparbavdi Police Station, Thane.

9) The applicant Shankar Laxman Navale was constantly in contact with accused no.2 Rahul Shivthare since prior to the incident. The investigation prima facie shows that applicant Shankar Navale is the habitual offender and crime no 352/98 for offenses u/s. 341, 384, 386, 377, 397 of IPC, Crime No. 593/12 for offenses u/s. 395, 391, 463, 468, 471 of IPC are registered against him in Yerwada Police Station, Pune. As per the investigation on record the applicant Shankar Navale has discharged material role in the conspiracy to commit murder of the deceased.

10) The applicants Nitin Dangat and Sameer Sadavarte had to pay huge amount to the deceased. After the settlement of the transaction, they were expecting that, deceased should pay sum of Rs.30 lacks to them. The investigation further discloses that murder of deceased has been committed for non payment of said amount of Rs. 30 lacks.

11) I have care fully gone through statements of prosecution witnesses Vinayak Hivarkar, Alpesh Tanna, Vijay Hajare, Kishor Aware and Vikas Shinde. Further more, I also perused the confessional statements of co-accused Ravindra Chorge and co-accused Rahul Shivthare, recorded u/s. 18 of MCOC Act. The

investigation prima facie shows that there was motive to commit murder of deceased Deven Shah and complainant is main eye witness to the incident. The watchman present in the parking slot has identified the co-accused Ravindra Chorge and co-accused Rahul Shivthare in the identification parade. The investigation comprises CDR collected from several mobile companies regarding conversations made through the cellphones seized from the applicants and co-accused. Having regard to criminal antecedents of the applicants and co-accused the competent authority has accorded sanction u/s.23(2) of MCOC Act. According to me, the subjective satisfaction of sanction according authority cannot be challenged at this stage, unless prosecution is given opportunity to lead evidence.

12) The Ld. Advocate for applicants much relied upon citations referred above to substantiate their submissions that, investigation made so far is not sufficient to invoke MCOC against applicants. It was also submitted on behalf of applicant Surendra Pal that, IO ignored the basic principle of sec. 27 of Indian Evidence Act and unnecessary relied upon the discovery of Arms from the house of applicant Surendra Pal. First of all prosecution has strongly relied upon the fact of alleged conspiracy to commit murder of the deceased. On this background the role of each applicant and co-accused cannot be separated from each other. Prima facie the applicant Surendra Pal was having knowledge of the conspiracy and also the fact that weapons were kept in his house. In such circumstances, the facts at hand are quite different than facts

under consideration in Pohalya Valvi's Case (supra).

13) In case of Hrishikesh Mehetre V/s State of Maharashtra(supra), the MCOC Act, was not invoked. In present case, applicants have to fulfill not only requirements of sec.439 of Cr.P.C. but also requirements of sec. 21(4) of MCOC Act. apparently, applicants are habitual offenders and probability cannot be overlooked that they may tamper with prosecution evidence, if released on bail.

14) The prosecution case is not exclusively based upon the confessional statements of co-accused and the confessional statements of co-accused is one of the material circumstance. On this background the observations recorded in Sanjay Taralkar's case are not helpful to the applicants.

15) Several co-accused are yet to arrested and investigation is in progress. On this background, the ratio laid down in Kailas Kolekar Vs State of Maharashtra(supra) cannot be relied upon in the light of facts at hand.

16) The shades and niceties of criminal conspiracy have been unfolded by Hon'ble apex Court in Yashpal Mittal v/s State of Panjab (AIR 1977 S.C. 2433). The legal position in this regard also finds place in Keher Sing v/s State AIR 1988 S.C. 1883. The object of the MCOC Act is to nip at bud the organised crime. The investigation made so far, including CDR reports, CCTV footage, seizure of fire arms, confessional statements of co-accused, statements of eye witnesses, evidence of identification parade prima facie show involvement of all the applicants in the

conspiracy to commit murder of deceased Deven Shah. All the applicants are habitual offenders, therefore able to tamper with prosecution evidence or may flee away, if they are released on bail. The apprehension of prosecution is well founded that applicants may continue their unlawful activities in future also, if released on bail.

17) For all reasons narrated herein above, I am declined to enlarg the applicants on bail, as applicants have not fulfilled requirements of sec. 439 of Cr. P. C. and 21(4) of MCOC Act, therefore applications are rejected with following order :-

**ORDER**

Bail applications exh. 7, 10 and 12 stand rejected, accordingly disposed of.

X X X

Pune.  
Date: 28/12/2018

(A. S. Mahatme)  
Spl. Judge under MCOC Act, Pune.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file judgment are same word for word as per original Judgment.

Name of steno	:	V. S.SONAWADEKAR (H.G. Stenographer)
Name of the Court	:	A. S. Mahatme, District Court - 6 & Additional Sessions Judge, Pune
Date of Order	:	28.12.2018
Order signed by P.O. on	:	31.12.2018
Order uploaded on	:	1.1.2019