



MCOG Case No. 39/2018
CNRNO.MHPU010095932018

State of Maharashtra Complainant.
Vs.

Ravindra Chorge & ors. Accused.

Shankar Laxman Navale Applicant/ Accused No.4

ORDER BELOW EXH.57

This is an application for discharge filed by accused No.4 Shankar Laxman Navale, in connection with CR NO.10/2018 registered by Deccan police station for the offences punishable under Section 302, 307, 120B, 201 of IPC, Section 3 r.w. 25 and 27 of Indian Arms Act, Section 37(1) r.w. 135 of Maharashtra Police Act and Section 3(1)(i), 3(2), 3(3), 3(4) of the MCOG Act.

2] Perused the application and say given by the prosecution at Exh.62.

3] Heard Adv. Shri. Koshe for the applicant accused and D.G.P. Smt. Ujwala Pawar for the State. I have also heard learned Advocate Shri. N.D. Patil for the original complainant.

4] Prosecution has come with the case that deceased Deven Shaha was a builder and developer. Informant Atit Deven Shaha is the son of deceased Deven Shaha. Deven Shaha wanted to purchase a land from village Darivali. Applicant accused No.6 Nitin Dangat was known to deceased Deven Shaha. He introduced accused No.7 Sameer Sadavarte to Deven Shaha. Accused Sameer agreed to help deceased Deven in the consolidated transaction of 400 acres of land of village

Darivali and memorandum of understanding (MOU) was executed on 18.04.2008. Till 2012 the transaction of sale of around 152 acres of land was done. On 25.08.2010 deceased Deven paid Rs.3.00 crores to accused No.6 Nitin Dangat as a commission for land under MOU. However, since the transaction could not be completed, accused No.6 Nitin Dangat was required to refund Rs.3.00 crores and accused No.7 Sameer was required to refund Rs.2.25 crores, paid as advance commission, to deceased Deven. Accused No.8 Rajesh Agrawal and accused No. 1 Ravindra intervened and agreed to settle the dispute between Deven Shaha and accused No.6 Nitin Dangat regarding refund of Rs.3.00 crores and Rs.1.05 crores were to be paid as commission for settling the dispute to accused No.8 Rajesh Agrawal and accused No. 1 Ravindra. Thereafter, it was agreed by accused No.6 Nitin Dangat to complete the transaction of village Darivali instead of paying back Rs.3.00 crores. Accused No.8 Rajesh Agrawal and accused No.1 Ravindra Chorge were to be paid Rs.1.05 corers towards the said settlement. Accused No.1 Ravindra Chorge and accused No.8 Rajesh Agrawal with the intervention of gangster Chhota Rajan, started pressurizing Deven Shaha. Deven Shaha paid Rs.25 Lakhs and Nitin Dangat paid Rs.50 Lakhs and Rs.30 Lakhs remained as balance. Accused No.8 Rajesh Agrawal demanded amount of Rs.30 Lakhs. Accused No.6 Nitin gave cheque of Rs.3.00 crores by way of security to deceased Deven and told accused No.1 Ravindra Chorge and accused No.8 Rajesh Agrawal that he paid Rs.3.00 crores to Deven Shaha. However, the cheque, was dishonoured. On knowledge of said payment, accused No.1 Ravindra and accused No.8 Rajesh started demanding their balance amount of Rs.30 Lakhs. Deceased Deven demanded Rs.3.00 crores of accused No.6 Nitin, Rs.2.5 crores of accused No. 7 Sameer Sadavarte for failure in land transaction, but they refused. It is alleged that, in order to avoid the payment of said amount

of commission, accused No.6 Nitin and accused No. 7 Sameer along with accused No.1 Ravindra and accused No.8 Rajesh Agrawal hatched a conspiracy to kill Deven Shaha. It is contended that the applicant accused No.6 Nitin paid Rs.2.0 Lakhs by RTGS to accused No.8 Rajesh, who then supplied the pistol to accused No.1 Ravindra. Present applicant accused No.4 Shankar gave Rs. 60 Thousand to accused No.2 Rahul for purchase of pistol. Then on 13.01.2018 at around 23.10 hours accused No.1 Ravindra and No.2 Rahul went to the house of deceased Deven armed with pistols and in presence of informant Atit, they both fired at Deven and Deven died.

5] On the basis of the report given by Atit Shaha, crime was registered. Investigation begun. It was found that the organized crime syndicate headed by accused No.5 Sunil @ Sonu Rathod was involved in commission of the crime and accused for pecuniary gain, committed the present crime and accordingly the proposal under Section 23(1)(a) for pre sanction was moved and sanction was granted on 23.03.2018 and provisions of MCOCA were invoked. After completing investigation and after obtaining sanction under Section 23(2), present charge-sheet came to be filed.

6] Adv. Shri. Koshe argued that the only allegation against the present applicant is that he supplied Rs.60 thousands to the co-accused No.2 Rahul Shivtare for the purchase of pistol, alleged to have been used for commission of the crime, and, the CDR regarding calls made by the applicant to co-accused No.2 Rahul Shivtare. There are no allegations against the applicant. His name is not mentioned in FIR. There is no recovery at his instance. There is no prima facie case against the present applicant to book him in the criminal conspiracy or offence of murder. Therefore, there is no question of invocation of offences under MCOCA. Applicant has no nexus with the organized

crime syndicate. Though there are two confessional statements, nothing incriminating is found in it against the applicant and therefore, the applicant may be discharged.

7] While opposing bail application learned DGP argued that the offence in question is serious in nature. Deceased Deven was a builder and developer and the dispute was because of the commission amount to be paid to co-accused No.6 Nitin Dangat and co-accused No.7 Sameer Sadavarte and then co-accused No. 1 Ravindra and accused No.8 Rajesh came in the picture. They intervened the dispute between deceased Deven and accused No.6 Nitin Dangat and for the said settlement, deceased Deven was to pay Rs.1.05 crores to them. Accused No.6 Nitin Dangat was required to refund the advance commission of Rs.3.00 crores to deceased Deven. Accused No. 6 Nitin avoided to pay Rs.3.00 crores. Cheque issued by him to deceased Deven was also dishonoured. Rs.70 Lakhs were paid to accused No.1 and 8 but Rs.30 Lakhs remained to be paid. As the accused No. 6 Nitin Dangat wanted to avoid payment and as accused No. 1 was supposed to recover Rs.30 Lakhs from deceased Deven, all accused hatched a conspiracy to kill Deven. Conspiracy is such a offence, where it is hatched behind curtains and therefore, the totality of the facts and circumstances need to be considered. She referred CDR and submitted applicant gave Rs 60 thousands to accused No. 2 Rahul for purchase of pistol. He played role in securing the weapon. She prayed for rejection of the application.

8] Original complainant /informant has filed written say at Exh.84 opposing the application. His advocate Shri. N.D. Patil also opposed the application by adopting arguments advanced by DGP Smt. Pawar.

9] Both parties have relied on number of reported judgments

viz -

- 1] Yash Pal Mital ..vs.. The State of Punjab - AIR 1977 SC 2433.
- 2] National Investigation Agency ..vs.. Zahoor Ahmad Shah Watali - In Cr. Appeal No. 578/2019
- 3] Smt. Mahabunnisa Begum ..vs.. The State of Telangana and 2 others in Cr. Petition No. 7108/2017 dated 25.10.2017.
- 4] State of Maharashtra ..vs.. Bharat Baburao Gavhane and others - 2006 ALL MR (Cri.) 2895.
- 5] Sherbahadur Akram Khan and others ..vs.. State of Maharashtra - 2007 ALL MR (Cri.) 1
- 6] State of Maharashtra ..vs.. Rahul Ramchandra Taru - 2011 ALL MR (Cri.) 2100.
- 7] State of Maharashtra ..vs.. Ajay Jagdish Pande and others - 2016 ALL MR (Cri.) 1864.
- 8] State of Maharashtra ..vs.. Gopal Sadhusharan Pandey- Cr. Appeal No. 781/2014 – 2017 SCC only Bom. 9667.
- 9] Union of India ..vs.. Prafulla Kumar Samal and another - AIR 1979 SC 366.
- 10] Niranjana Singh Karam Singh Punjabji.. vs.. Jitendra Bhimraj Bijjaya and others - 1990 (4) SCC 76.
- 11] State of Karnataka ..vs.. L. Muniswamy - 1977 (2) SCC 699.
- 12] Farman Imran Shah @ Karu Vs. State of Maharashtra, 2014 ALL MR (Cri) 1571

10] There is no dispute about the law propounded in the above mentioned judgments relied by parties.

11] The learned D.G.P. Smt. Pawar while opposing the application argued that once the competent authority has granted sanction under Section 23(2) of the MCOCA Act for filing charge-sheet, in view of the judgment of Hon'ble Bombay High Court in the case of

Farman Imran Shah @ Karu Vs. State of Maharashtra, 2014 ALL MR (Cri) 1571, now it is not open to question the application of provisions of MCOCA Act, as that can be dealt with only at the time of final arguments when prosecution is given opportunity to lead evidence. The learned Spl. P. P. by taking me through the investigation papers filed on record argued how the conspiracy was hatched and the organized crime syndicate involving the present applicant committed murder of deceased Deven for their pecuniary benefits using violence.

12] The learned Spl. P. P. placed reliance on the judgment of **Farman Shah** (supra) contending that once the competent authority has granted sanction, there is no question of discharging accused from the offences under the MCOCA Act, can not be accepted. I may note that before the Hon'ble High Court in the case of Farman Shah, the discharge was sought on two grounds, [i] that there was no material at all on record for framing the charge against the accused and [ii] there was total non-application of mind of the competent authority while granting prior approval as contemplated under section 23(1)(a) and sanction as contemplated under section 23(2) of MCOCA Act. The Hon'ble High Court (in para 12) after considering the evidence on record gave finding that there was strong prima-facie case against the appellant to frame the charge as contemplated under section 228 of the Code of Criminal Procedure. So far as the challenge to the pre-approval and sanction, the Hon'ble High Court held that those points can be dealt when the prosecution is given an opportunity to lead the evidence. Therefore, in my humble opinion, the Hon'ble Bombay High Court in Farman's judgment, nowhere put bar on the trial court or the Special Court in making enquiry as to find out whether there is a prima-facie case to frame charge under section 228.

13] My view is further fortified by the observations of Hon'ble

Bombay High Court in Criminal Appeal No.376/2017 when Hon'ble High Court set aside the order of this court and directed this court to decide the discharge application afresh. In para 8, the Hon'ble High Court held ;

“ We are of the view that the learned Special Judge has completely misconstrued the Judgment of this Court in the case of Farman Shah (*supra*). The said Judgment itself shows that the Division Bench of this Court had considered the material against the accused on merits while deciding whether the accused should be discharged from the offences under the MCOC Act. In that context, the Division Bench also observed that insofar as the attack on the approval or sanction was concerned, it could only be taken to its logical end during trial and not at the discharge stage. By no stretch of imagination, this Judgment rules that at the time of deciding the discharge application, the merits of the case cannot be taken into consideration and only limited scope available to the accused is to challenge the application of MCOC Act, on the competency of according sanction or approval. The Judgment itself demonstrates that the entire material has to be considered to arrive at a *prima-facie* finding that the offence under the MCOC Act is made out”.

14] The Hon'ble Bombay High Court in the case of **Govind Ubhe Vs. State of Maharashtra**, reported in **2009 ALL MR (Cri) 1903**, after taking into consideration the legal proposition and law down by the Hon'ble Supreme Court in various reported judgments on the point of discharge, held at para 25 as under :-

“ The principles laid down by the Supreme Court in the above cases need to be summarized. It is settled law that at the stage of Section 227 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is *prima-facie* case against the accused or not. The court has to be satisfied that there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him. The Court's enquiry must not be directed to find out whether the case will end in conviction. However, though roving enquiry is not permissible, the court can consider whether the material collected by the prosecution if accepted as it is without being subjected to cross-examination gives rise to strong and grave suspicion for presuming that the

accused has committed the offence and that unrebutted material will lead to a conviction. If at the stage of Section 227 or Section 228, the scales as to the guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial. If there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then the court will proceed to frame the charge. But if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the court will be within its right to discharge the accused. Suspicion has to be strong and grave suspicion leading the court to presume that the accused has committed an offence. While basic infirmities and broad probabilities can be considered, the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Probative value of the material cannot be gone into at that stage.”

15] I may note, admittedly name of the applicant is not in FIR. There is no recovery by police at his instance. The only circumstances on which the State has put reliance are that the applicant alleged to have paid Rs.60 thousands to co-accused No.2 Rahul Shivtare for purchase of firearm and it shows the nexus of the applicant with co-accused, who actually fired a gun shot at Deven. Further to show the nexus of the applicant with the organized crime syndicate, the prosecution is relying on CDR regarding the call details between the applicant and the accused No.2 Rahul.

16] During investigation the investigating officer got recorded confessional statement of two co-accused a] accused No.1 Ravindra Chorge and b] accused No.2 Rahul Shivtare. Admittedly, accused No.1 Ravindra Chorge did not name the present applicant in his statement. There is reference of present applicant in the confessional statement of accused No.2 Rahul Shivtare. It is clear from the confessional statement

of accused No.2 Rahul Shivtare that in one earlier incident at Ranjangaon MIDC said Rahul Shivtare was beaten by mob and applicant Shankar Navale was one of the assailants, who had beaten Rahul. When the applicant Rahul saw Shankar, he identified him and threatened him and that time applicant Shankar alleged to have given his phone number to accused No.2 Rahul with assurance to help him. But there is no material on record other than confessional statement of accused No.2 Rahul to show that any assistance or help was given by Shankar to Rahul in connection with the present crime or when applicant shared his mobile number accused No.2 Rahul, he had any knowledge about the criminal activities of accused No.2 Rahul and the conspiracy about murder of Deven.

17] So far as the allegations that the applicant Shankar had paid Rs.60 thousands to accused No.2 Rahul for purchase of pistol, the confessional statement of accused No.2 Rahul speaks otherwise. In confessional statement accused No.2 Rahul has specifically mentioned that he paid Rs.60 thousands to accused No.5 Sunil Rathod and procured the pistol and cartridges. He paid the said amount by withdrawing the same from Vidya Sahakari Bank account of his mother, behind her back. The very confessional statement which the prosecution has filed on record is contrary to the story canvassed by the prosecution against the applicant, about payment of Rs.60 thousands by the applicant to accused No.2 Rahul. Further I may note that at the end of the confessional statement accused No.2 Rahul has specifically stated that he had intentionally took the name of the applicant Shankar before police as he had assaulted him at Ranjangaon and wanted to take revenge of it. He thought that Shankar would help him getting out of this case. Therefore, he took name of Shankar Navale. As such, the confession made by accused No.2 Rahul is of no use to show applicant's

involvement in crime, or to raise any inference about his involvement in the conspiracy so hatched to kill Deven.

18] There are CDR filed on record by the prosecution to show that there were calls between applicant Shankar and accused No.2 Rahul. It is clear from the confessional statement of Rahul that when Rahul was passing by the road, he met applicant Shankar and that time Shankar had exchanged phone number to accused No.2 Rahul as he had threatened him. While allowing bail application of Shankar the Hon'ble High Court has observed that "another ground of involvement of the applicant (Shankar) based on CDR was considered against the applicant of his contacting co- accused Rahul on two occasions prior to the incident firstly on 01.09.2017 and secondly on 14.10.2017. The same is of no consequence as incident is of 13.01.2018. In that view of the matter, these CDRs by itself are too short to connect the applicant in present crime. Even otherwise co-accused Rahul as well as applicant were knowing each other prior to incident has revealed from confession of Rahul. Where he had stated that prior to the incident, there was some incident between them which occurred at Ranjangaon MIDC when he was assaulted by the applicant. In view of the matter, it cannot be said that the applicant by contacting co-accused Rahul had actively participated in commission of the present crime. Though the applicant is involved in 3 other crimes, admittedly he is acquitted from them."

19] In the present case it is the allegation of prosecution that organized crime syndicate headed by accused No.5 Sunil Rathod had hatched a criminal conspiracy and committed crime for pecuniary gain. The accused No.2 Rahul Shivtare, No.3 Surendra Pal, No.4 Shankar Navale, No.5 Sunil Rathod, No. 6 Nitin Dangat, accused No.7 Sameer Sadavarte, accused No.8 Rajesh Agrawal were the members of

organized crime syndicate. In order to avoid payment of Rs.3.00 crores by Nitin Dangat and for recovery of Rs.30 Lakhs by the accused no. 1 Ravindra Chorge and No.8 Rajesh Agrawal, a conspiracy was hatched and accused no.2 Rahul along with accused No.1 Ravindra killed Deven. In view of the above made discussion I find that there is no material on record to show that the applicant Shankar Navale was member of the said organized crime syndicate and he had played any role in connection with the crime. Prima facie the material on record is not sufficient to show even remotely that he financed the accused No.2 Rahul for procuring the pistol. Two calls which were made long back before the date of crime, are of no consequence in absence of any other material on record. Therefore, I find that the evidence on record does not give rise to the suspicion against applicant accused Shankar Navale about his involvement in the crime. On very face of the material on record, I find that the prosecution has failed to show that the applicant Shankar has any nexus with the organized crime syndicate, he was part of the conspiracy hatched to kill Deven and he directly or indirectly played any role in the commission of the crime. His involvement in the present crime is not clear from the material on record and therefore, I am of the view that there is no sufficient material on record if remained un rebutted would warrant conviction of the applicant. The material on record is not sufficient to show the involvement of accused in the principal crime under the Indian Penal Code and also in crime under the MCOCA. Therefore, the application deserves to be allowed. The applicant can't be made to face trial unnecessarily. He is entitled to get discharged from the offences punishable under Section 302, 307, 120B, 201 of IPC, Section 3 r.w. 25 and 27 of Indian Arms Act, Section 37(1) r.w. 135 of Maharashtra Police Act and Section 3(1)(i), 3(2), 3(3), 3(4) of the MCOC Act. Hence, I pass the following order :-

ORDER

1] Application Exh.57 filed by applicant Accused No.4 Shankar Laxman Navale is allowed.

2] Accused applicant Shankar Laxman Navale is discharged from the offences punishable under Section 302, 307, 120B, 201 of IPC, Section 3 r.w. 25 and 27 of Indian Arms Act, Section 37(1) r.w. 135 of Maharashtra Police Act and Section 3(1)(i), 3(2), 3(3), 3(4) of the MCOA Act in MCOA Case No. 39/2018 arising out of CR No. 10/2018 registered by Deccan police station.

Pune,
Date- 18th February,2020

(Aniruddha Y. Thatte)
Special Judge, Under MCOA Act, Pune.

CERTIFICATE

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	Mrs. S.M. Khisti Stenographer Grade I
Name of Court	Shri. A. Y. Thatte, District Judge 12 and ASJ, Pune.
Date of Order	18.2.2020
Order signed by PO on	20.2.2020
Order uploaded on	20.2.2020