

MHPU010095932018



Order below Exh.290 in Spl. MCOCA Case No. 39/2018

Accused No.8- **Rajesh @ Pandit Kamal Agrawal** was arrested on 19/06/2018 in connection with C.R.No. 10/2018 registered in Deccan Police Station under Sec. 302, 307, 120-B, 201 of IPC, under Sec. 3, 25, 27 of the Arms Act, under Sec.37(1)(3) r/w 135 of the Maharashtra Police Act and under Sec.3(1)(i), 3(2), 3(3), 3(4) of the Maharashtra Control of Organized Crimes Act,1999 (MCOCA). He has filed this application for bail under Sec. 483 of the Bharatiya Nagarik Suraksha Sanhita,2023 (BNSS). He contends that this is his second bail application and no other application is pending in any other Court.

2. This accused had filed an application for bail (Exh.106) before this Court but it has been rejected 01/06/2020. He then filed bail application before the Hon'ble High Court bearing Bail Application No.1228 of 2021 but it was also rejected on 21/08/2023. He then filed SLP before the Hon'ble Supreme Court against that order bearing SLP (Cri.) Diary No.48488/2023 but the Hon'ble Supreme Court was not inclined to interfere with the impugned order and hence, the SLP was dismissed on 04/12/2023. However, the Hon'ble Supreme Court, while dismissing the SLP, observed as follows-

“We, however, clarify that it will be open to the petitioner **Rajesh @ Pandit Agrawal** to file a fresh application for grant of bail in case the trial does not proceed expeditiously or if same gets prolonged due to

reasons not attributable to the petitioner- Rajesh @ Pandit Kamal Agrawal can file a fresh application for grant of bail in case of substantial change in circumstances. If any such application is filed, the same will be considered and decided in accordance with law”.

3. This accused has therefore, filed this application for bail on the ground firstly, that the trial of this case has not been proceeded expeditiously, as the charge is yet to be framed and secondly, there is substantial change in the circumstances, as the co-accused Nitin Dangat, because of whose transaction with the deceased, the deceased has been killed is released on bail by this Court. Apart from these two grounds, the accused seeks bail on re-appreciation of merit on the basis of new material which was lost sight of when his earlier bail applications were decided.

4. The learned Spl.PP and the learned advocate appearing for the informant have challenged very maintainability of this application before this Court, on the face of the order of the Hon’ble Supreme Court referred above, according to them, any such bail application was required to be filed before the Hon’ble Supreme Court and not before this Court. According to me, the submissions sans merit. The Hon’ble Supreme Court has permitted to this accused to seek bail despite rejection of his prayer by the Hon’ble Supreme Court in two circumstances. Firstly, in case the trial does not proceed expeditiously or if same gets prolonged due to reasons not attributable to the petitioner and secondly, in case of substantial change in circumstances. According to me, this Court would be proper Court to examine the availability of these two grounds as those could accrue before this Court. Obviously,

the accused has to establish these two grounds before this Court and he need not approach the Hon'ble Supreme Court for this purpose. Thus, this Court assumes its jurisdiction to consider this application on its merit.

5. This propels me to come to the first ground i.e. the trial does not proceed expeditiously and it gets prolonged due to reasons not attributable to the accused. The record would show that the trial of this case is not withheld because of paucity of time or huge pendency before this Court but because of the obstruction by the accused themselves to proceed with the trial expeditiously. The accused in this case went on to file bail applications and discharge applications one after another before this Court, the Hon'ble High Court and even before the Apex Court. Every attempt to proceed with the trial was negated on the ground of pendency of such application. So, it is not permitted to the accused to protract the trial on one hand and seek bail on the other hand, saying that he is entitled for bail as the trial has not commenced expeditiously.

6. Considering the case of this accused in particular, he was arrested on 19/06/2018. His first bail application was rejected on 01/06/2020, The bail application filed by him before the Hon'ble High Court was rejected on 21/08/2023 and his SLP before the Apex Court was dismissed on 04/12/2023. Thus, almost 5 years time has been lapsed in considering the bail plea of this accused alone. There are 9 accused in this case and some of them had filed bail applications and discharge applications before this Court and also before the Hon'ble High Court. This Court was kept engaged in hearing and deciding those applications. In fact, the Hon'ble High Court, while rejecting bail

application of this accused, had directed this Court to proceed with the trial expeditiously. The Hon'ble Supreme Court considered that order to be proper and rejected the SLP of this accused, with hope that the trial would proceed expeditiously, as directed. Therefore, liberty was granted to this accused to seek bail, if the trial is not proceeded expeditiously and if it is protracted for the reasons not attributable to the accused. However, the bail application of co-accused Nitin Dangat was pending and it was decided on 17/12/2024. This accused has thereafter filed this application on 04/01/2025 raising the above two grounds and also the ground of parity. Thus, the ground of delay in trial is created ground and this accused is not the sufferer of long incarceration due to fault of the system. The delay is caused due to filing successive bail applications by this accused and also by the other accused. Therefore, according to me, the ground of delay in trial is not available to this accused.

7. Coming to the change in the circumstances, it is necessary to refer the incident and its background facts. The incident, as it appears from the FIR and other investigating papers was that the deceased Deven Jaysukhlal Shah, on a fateful evening of 13/01/2018, celebrated birthday of his wife in one hotel with his family and returned home in Sayali Apartment, Lane No.7, Prabhat Road, Pune. At about 11.10 p.m., his door bail rang. He opened the door and saw one of the watchmen namely Sunilkumar Nirmal, who was running laundry in the parking space. He told that two persons are calling him to the parking space. Deven Shah and his son Atit (informant) therefore, went to the parking space and they saw that the accused Ravindra Chorage was there with one unknown person. Both of them opened fire at Deven Shah and fired one round each and Deven Shah sustained bullet injuries on his chest

and stomach. Atit tried to apprehend them but they fired at him also but fortunately, he did not sustain any injury. Both of them fled away by their motorcycle. Deven Shah was taken to the hospital but he succumbed to injuries. The incident was reported to Deccan Police Station and Atit lodged complaint against two unknown persons at about 5.26 a.m. on 14/01/2018 and based in it, the crime was registered.

8. On 22/03/2018, Atit gave supplementary statement to police that he was knowing one of the assailants to be Ravindra Chorage, as he was seen by him earlier coming to his office in relation to his business but due to fear and by taking into consideration that there is no support to his family behind back of his father, he did not name him in FIR. He gave information regarding business transaction of his father and based on it, other accused were connected to the crime and they were arrested. His further supplementary statement was accordingly recorded on 21/06/2018. Another assailant was identified and he was the friend of Ravindra Chorage namely Rahul Shivtare (accused No.2). Other seven accused were arraigned with aid of Sec.120-B of IPC.

9. The motive behind commission of this crime was that the accused Nitin Dangat had his business transactions with the deceased Deven Shah, which relates back to the year 2005. Deven Shah was doing ceramic business in the premises owned by the accused Nitin Dangat on rent. Deven Shah thereafter, started real estate business by name 'Ambika Group' and Nitin Dangat was helping him in that business on commission basis. In the year 2008, Nitin Dangat introduced the

accused Sameer Sadawarte to Deven Shah and they told him that they can arrange for 400 Acres of land situated at village Darawali and Mulashi and Deven Shah should invest money to purchase those lands. Ultimately, it was agreed that Nitin Dangat and Sameer Sadawarte shall negotiate with the farmers, arrange for the title documents and finalize the transactions with them at their level. Deven Shah shall pay Rs. 5 Lakhs per Acre as consideration. He will pay 25% of actual profit to them as commission. As per this agreement, Deven Shah paid near about Rs.14 Crores to Sameer Sadawarte for those transactions. He also paid Rs.3 Crores to Nitin Dangat as 25% of profit. However, they could not finalize all the transactions and Deven Shah was facing difficulties regarding title documents of some of the farmers. Consequently, the transactions of all the lands cannot be finalized as agreed.

10. The accused Nitin Dangat therefore, decided to retire himself from those transactions. Accordingly, in the year 2010, a mutual agreement was executed between Nitin Dangat and Deven Shah. Sameer Sadawarte settled the transactions and cleared the dues of Deven Shah. However, it was alleged that Nitin Dangat was not discharging his duties as per the agreement nor was returning Rs.3 Crores paid to him by Deven Shah as commission.

11. In the year 2014, Deven Shah approached the accused Ravindra Chorage and Vitthal Nimbalkar for their help to recover the amount of Rs.3 Crores from Nitin Dangat through Kishor Aware, who was the common friend of them and Nitin Dangat. Ravindra Chorage, Mahesh Mengane and Vitthal Nimbalkar were residing in the same locality and Ravindra Chorage came in contact with Vijay Hajare from

Karjat, Dist. Raigad and Kishor Aware from Talegaon through Mahesh Mengane, who was murdered subsequently. Ravindra Chorage came in contact with Dada Vighne through Vitthal Nimbalkar. All were working as the commission agents in real estate.

12. In the year 2013, one Sikander Shaikh had brought proposal to Ravindra Chorage of 62 Acres of land at Borivali. He contacted Vijay Hajare at Karjat and he introduced him with this accused Pandit Agarwal from Indore, (M.P.). It is said that Pandit Agarwal was a man of gangster Chota Rajan. All of them decided to intervene in the transaction between Deven Shah and Nitin Dangat as per request of Deven Shah. They arranged a meeting with Deven Shah at Harvest Club near Mhatre bridge. Deven Shah told them in the meeting that he has dues of Rs.11 Crores from Nitin Dangat which he is not paying. If they managed to recover that amount, he will pay their commission. The commission of 50% was demanded but subsequently, it was finalized at 30%. A joint meeting was called with Nitin Dangat and Deven Shah wherein, Nitin Dangat agreed to clear the title of remaining lands. On the next day, a meeting of Deven Shah, Nitin Dangat and Sameer Sadawarte was held wherein, all the disputes were settled and Nitin Dangat and Sameer Sadawarte agreed to pay Rs.5 Crores to Deven Shah.

13. For the aforesaid deal, the above persons were to get Rs.1 Crore 10 Lakhs from Deven Shah as commission. Out of it, Deven Shah paid token amount of Rs.75 Lakhs to this accused Pandit Agarwal. Out of the said amount, Rs.2,50,000/- were paid to Ravindra Chorage. Vijay Hajare, Dada Vighne and Vitthal Nimbalkar. After some days, the

accused Ravindra Chorage was in need of money and he therefore, inquired with this accused Pandit Agarwal about remaining amount due from Deven Shah. He told that Deven Shah has not paid remaining amount and he is not receiving his phone call. So, he instructed the accused Ravindra Chorage to meet Deven Shah and recover that amount. Accordingly, the accused Ravindra Chorage was frequently meeting to Deven Shah but he was not paying the said amount. Subsequently, this accused Pandit Agarwal also stopped to make or receive his phone calls.

14. It was found in the investigation that somewhere, 10 months prior to the incident, this accused Pandit Agarwal gave a pistol to Ravindra Chorage at Khopoli to kill Deven Shah, if he failed to pay the remaining amount. The accused Ravindra Chorage shown that pistol to his friend Rahul Shivtare (another assailant). Rahul Shivtare shown another pistol with him saying that he has purchased it for Rs.60,000/- from one Sonu Rathod from Ujjain (M.P.). Pandit Agarwal was making phone call to the accused Ravindra Chorage and was asking him to meet Deven Shah and demand the remaining amount and if he refused to pay, kill him by using pistol given to him. In 2017, Pandit Agarwal was residing in the State of Mdhya Pradesh at that time and he came to Pune and told Ravindra Chorage to wait for some time, Deven Shah would be either abducted or killed.

15. Shri. R.T. Deshmukh, the learned advocate for this accused submits that above prosecution story is totally false and concocted. This accused had no remote concern to the incident and therefore, his name was not appearing in the FIR. There was no evidence collected during

investigation to connect this accused to the alleged crime. This accused gave pistol to Ravindra Chrage to kill Deven Shah is a self serving statement made only to falsely implicate this accused in this crime. The incriminating confessional statements of the co-accused cannot be used against this accused in absence of corroborative material. None of the prosecution witnesses have named this accused to be one of the conspirators to kill Deven Shah. Therefore, this accused cannot be arrayed as the co-accused with aid of Sec.120-B of IPC. Deven Shah might have been killed because of the transaction between him and Nitin Dangat. Nitin Dangat was made an accused as one of the conspirators and he abated the crime. He is released on bail and therefore, this accused is entitled to be released on bail on the ground of parity.

16. The learned advocate further submits that the charge is not framed and the trial is not likely to commence in near future. The allegation that this accused is a man of gangster Chota Rajan is baseless and false. There is no material to substantiate such contentions. The complaint itself was against unknown persons and this accused is falsely implicated after thought. The accused No.3, 6, and 9 have been released on bail whereas, the accused No.4 and 7 have been discharged. This accused stands on better footing than them. This accused is the permanent resident of Indore (M.P.) and he is the only earning hand in his family. He is a businessman and has reputation in the society. He will abide by all the conditions those would be imposed by this Court.

17. In support of the above submissions, the learned advocate has filed his detailed notes of arguments (Exh.324) and he has relied on

certain judgments and bail orders. In *Ashutosh Butte-patil v/s State of Maharashtra [Cri. Bail A.No.312/2021 decided on 19/10/2022]*, the Hon'ble Bombay High Court referred various rulings on the point of bail and granted bail to the accused holding that he is in custody for more than 8 years and it is not clear as to when the trial would come to end. In *Akash Chandalia v/s State of Maharashtra [Cri. Bail A.No.1779/2023]*, the earlier two bail applications of the accused were rejected and on third occasion, the report from the trial Court was called as to progress of the trial. It was reported that 2 to 3 years would be required to conclude the trial. The accused was granted bail.

18. In *Nadeem Lakdawala v/s State of Maharashtra [AIRONLINE 2023 BOM 1392]*, the name of the applicant was not mentioned in the FIR but he was named in the supplementary statement. There was no evidence of nexus of the applicant with any of the accused who were the members of the organized crime syndicate. The bail was granted holding that the bar under Sec.21 of MCOCA is not attracted. In *Nagesh Gangawane v/s State of Maharashtra [Bail A.No.78/2016 decided on 22/02/2016]*, the accused was released on bail holding that the question of retracted and the voluntary and truthful nature of confessions cannot and need not be gone into at the stage of bail. The disputed identity of the applicant, the retraction of the confession, coupled with the inconsistency and lack of corroborative material, would *prima facie* not justify further detention of the applicant. In *Babu Singh v/s State of U.P. [1978 Cri.L.J.651]* it is held that the order refusing bail earlier does not bar fresh application on latter occasion giving more details, further developments and different considerations. In *Deepak Mankar v/s State of Maharashtra [2019 SCC*

OnLine Bom 8036], the bail was granted to the applicant holding that if the application of MCOCA is doubtful *qua* the petitioner, then the petitioner is entitled to be released on bail.

19. The learned advocate for the accused, with the help of above rulings, submit that there is no material against this accused to invoke the provisions of MCOCA. It is a fact that the trial has not been commenced. If it is commenced, it will take considerable time to conclude. Rejection of earlier bail applications would not come in the way of the accused to seek bail and such liberty has been expressly kept open by the Apex Court. The retracted confessions of the co-accused cannot be the basis for implication of this accused in absence of other corroborative material. The name of the accused was not mentioned in the FIR but the informant named him in the supplementary statement after thought. Thus, the ratio in all the above rulings would be squarely applicable to this accused. He therefore, submits that it is a fit case wherein the accused can be released on bail.

20. The Investigating Officer has opposed this application by filing his say (Exh.302) and the informant has also filed say (Exh.331). The learned advocate appearing on his behalf of the informant has relied on the judgment in *Kunnimohammad v/s State of Kerala [2024SCCOneLine SC 3618]* wherein, the case was of murder and the conviction was challenged. The plea of parity was not accepted on the ground that the appellant had different role in the incident. In *Adarsh Khare v/s State of Maharashtra [Cri. Bail A.No.163/2024 decided on 30/09/2024]*, the case was under MCOCA. The bail application was rejected as there was no change in the circumstances. In *Somnath*

Gaikwad v/s State of Maharashtra [2024SCC OnLine Bom 1124], the case was of gang rape. It is held that mere delay in the trial pertaining to grave offences, by itself cannot be a ground to enlarge an accused on bail, dehors the facts. In *Jagjeet Singh v/s Ashish Monu [AIR 2022 SC 1918]*, the victim's rights have been discussed and the bail granted by the High Court was cancelled on the ground that the relevant factors were not considered and fair and effective hearing to the victim was not given. In *Mohammad Shaikh v/s State of Maharashtra [Cri. Appeal No.559/2022 decided on 15/04/2025]*, the conviction of the accused was confirmed holding that impugned judgment is well reasoned and legally sound.

21. Smt. Ujjwala Pawar, the learned Spl.PP submits that the bail plea of this accused has been already rejected upto the Apex Court. There is no substantial change in the circumstances to entertain this bail application afresh. The delay to proceed with the trial is attributed to the accused in this case and this accused cannot claim undue benefit of it. The grant of bail to the co-accused does not attract the ground of parity to this accused, as the role and motive are altogether different. The prosecution has been always ready to conduct the trial expeditiously. Secondly, the incident has taken place for recovery of the remaining amount of Rs.30 Lakhs from the deceased and the involvement of this accused in the alleged crime is explicit from the investigating papers. He was associated with the organized crime syndicate of underworld don Chota Rajan. On his instruction, the accused No.1 has killed Deven Shah with the help of the accused No.2. If this accused is released on bail, he would pressurize the prosecution witnesses. The offence committed by the accused attracts punishment of

death or life imprisonment. He therefore, may not be released on bail. The informant has also engaged private advocate Shri Pushkar Patil who submits in tune with the submissions of the learned Spl.PP that this accused is the main culprit who has killed Deven Shah and there is absolutely no ground to release him on bail.

22. Having anxiously heard both the sides, I have already discussed as to why the ground of delay in trial is not available to this accused. The ground of parity is not available to this accused for the simple reason that murder of Deven Shah was committed not because of the transaction between Deven Shah and Nitin Dangat but because of the transaction between this accused and Deven Shah. The merit of the case of the accused has been examined by this Court, the Hon'ble High Court and also by the Apex Court and his prayer for bail has been already rejected. The accused is not able to show any new ground or further development to entertain his prayer for bail once again. The only development was that the co-accused Nitin Dangat was released on bail. However, his role and motive is altogether different from the accused Nitin Dangat. Therefore, this cannot be taken as new ground or further development to release this accused on bail.

23. To address the role of this accused, the statements of the witnesses Vijay Hajare, Dada Vighne and Vitthal Nimbalkar, who had taken part in the deal and who were the beneficiaries of the transaction with Deven Shah would be sufficient to *prima facie* establish the role of this accused in eliminating Deven Shah. While deciding bail application of Nitin Dangat, it was found that Nitin Dangat had no *prima facie* motive, much less, his actual participation in conspiracy to kill Deven

Shah. As per the FIR itself and the statements of prosecution witnesses, the business transactions of Deven Shah with Nitin Dangat were settled and Nitin Dangat agreed to repay Rs. 3 Crores and issued a post dated cheque of that amount to Deven Shah. So apparently, Nitin Dangat was completely discharged from his liabilities under the transactions with Deven Shah. Therefore, there was no motive of Nitin Dangat to commit murder of Deven Shah. None of the co-accused or witness stated that Nitin Dangat was one of the conspirator in killing Deven Shah. Under this backdrop, Nitin Dangat has been released on bail by this Court. His release cannot attract the ground of parity to this accused.

24. Thus, in view of the above discussion, there is no scope to say that this accused establishes any new ground on merit to justify his release on bail and the ground of parity is not available to him. In view of these reasons, I am of the considered view that this accused is not entitled to be released on bail. Hence, the following order.

ORDER

The application is rejected.

Pune
Date: 27/05/2025

(S.R. Salunkhe)
Special Judge (MCOCA), Pune.