



MCOG Case No. 39/2018
CNR NO.MHPU010095932018

Rajesh @ Pandit Kamal Agarwal

.... Applicant.

Vs.

The State of Maharashtra

.... Respondent.

ORDER BELOW EXH.106

This is the first application for regular bail filed by the accused applicant Rajesh @ Pandit Kamal Agarwal under Section 439 of the Cr.P.C. read with Section 21(4) of the MCOG Act 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. 112.

3] Heard Adv. Shri. D'Lima for the applicant accused and Special P.P. Shri. Kavediya for the State.

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. 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 commission. Accused No.8 Rajesh Agrawal intervened and agreed to settle the dispute between Deven Shaha and applicant Nitin Dangat regarding refund of Rs.3.00 crores and Rs.1.05 crores was to be paid as commission for settling the dispute to accused No.8 Rajesh Agrawal. Thereafter, it was agreed by the applicant 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.25,00,000/ - and Nitin Dangat paid Rs.50,00,000/- and Rs.30,00,000/- remained as balance. Accused No.8 Rajesh Agrawal demanded amount of Rs.30,00,000/- to Deven Shaha. Accused 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.30,00,000/-. Deceased Deven demanded Rs.3.00 crores of applicant accused No.6 Nitin, Rs.2.5 crores of accused No. 7 Sameer Sadavarte for failure of land transaction but they refused. In order to avoid the payment of said amount of

commission, it is alleged that they along with accused No.1 Ravindra and accused No.8 Rajesh Agrawal hatched a conspiracy to kill Deven Shaha. It is contended that the accused No.6 Nitin paid Rs.2,00,000/- by RTGS to accused No.8 Rajesh, who then supplied the pistol to accused No.1 Ravindra. 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] Advocate D'Lima for the accused applicant argued that the accused is falsely implicated in the crime. He has no connection with the organized crime syndicate involved in the crimes or with other co-accused. Though there is entry of Rs.2,00,000/- by RTGS, said amount was received for supply of building material like stone. Co-accused Ravindra Chorge is falsely implicated in the crime. Two co-accused have been released on bail by the Hon'ble High Court. The role of the present applicant is of lesser degree. He is ready to abide any condition if imposed. He has no past criminal record. Therefore, the offences under MCOCA are not made out.

7] Special P.P. Shri. Kavediya argued that the role of the applicant accused was vital. He hatched a conspiracy to kill

deceased Deven Shaha as Deven Shaha failed to pay amount he agreed to pay the applicant for settling is dispute with co-accused Nitin Dangat. The applicant has contact with criminal world including Chhota Rajan. The statement of witnesses show that the accused had supplied a gun to Ravindra Chorge, which was used for the commission of the crime. Therefore, there is sufficient material on record to show that the accused is involved in the crime and he prayed for rejection of the application.

8] I may note that there are two confessional statements under Section 18 of the Act, one is of accused Ravindra Chorge and another of accused Rahul Shivtare, who according to prosecution were the two persons, who in fact executed the plan to kill Deven Shaha. They fired bullet shot at Deven Shaha. Accused Ravindra Chorge alleged to have retracted the confession made by him but no such case is with the confessional statement of Rahul Shivtare. Under MCOCA the confession made by the accused is not only admissible against the maker but also against the co-accused. So far as retraction of the confessional statement by Ravindra Chorge is concerned, the same can be dealt with it appropriate time when parties would lead their evidence. Suffice to say that there are confessional statements of two accused which shows nexus of the present applicant with other co-accused including Ravindra Chorge and Rahul Shivtare. Applicant has nexus with the organized crime syndicate. He gave Ravindra Chorge some amount he received from Deven Shaha. He also gave fire arm and cartridges to Ravindra Chorge in order to execute a plan of killing Deven Shaha.

9] Not only the confessional statement of co-accused but also the statement of witnesses like Vijay Hazare, Vitthal Nimbalkar, Prakash Vighne and Vikash Shinde goes to show the nexus of the

applicant with the organized crime syndicate involved in the incident. Prima facie it is clear that Deven Shaha was a builder and, developer, who involved in developing the housing complexes and there was a dealing between him and co-accused Nitin Dangat. He paid huge amount to Nitin Dangat for arranging lands. When Nitin Dangat failed to arrange those lands, Deven Shaha demanded his money back but Nitin Dangat did not pay the amount. Deven Shaha hired the services of present applicant and other co-accused for settling the dispute with Nitin Dangat and Nitin Dangat gave one cheque to Deven Shaha for returning the amount but the said cheque was not honoured and Deven Shaha did not receive the amount. But the present applicant and other co-accused kept on insisting Deven Shaha to pay amount which he agreed to pay to them for settlement of the dispute. The applicant is having nexus with Chhota Rajan gang. Since Deven Shaha did not pay balance amount, he hatched a conspiracy and arranged fire arms. At his instance Ravindra Chorge and Rahul Shivtare killed Deven Shaha.

10] So far as the contention of the applicant that accused has no past criminal record, showing in two cases cognizance is taken by the court, law is settled on this point. The Hon'ble Bombay High Court in the case of *Govind Sakharam Ubhe vs. The State of Maharashtra 2009 ALL MR (Cri) 1903* has held that if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case.

11] It is argued that the applicant received Rs.2,00,000/- for the supply of stone. There is nothing on record in support of said

contention. Fact remains that the applicant received Rs.2,00,000/- from co-accused Nitin Dangat.

12] So far as the bail granted to the co-accused by the Hon'ble High Court, I may note that the role of the two accused to whom bail was granted was different in nature. So far as the present applicant is concerned not only he has nexus with the organized crime syndicate but he was involved in the conspiracy hatched to kill Deven Shaha. He repeatedly sent Rainvdra Chorge to Deven Shaha for recovery of the amount. He arranged firm arm used for killing Deven shaha. The material on record is sufficient to show that the applicant prima facie has committed offence under MCOCA. If the accused is released on bail, the possibility of his repeating crime and tampering prosecution evidence, cannot be ruled out. The possibility of the accused getting absconded is also there. Therefore, the applicant is not entitled for bail. Hence, the following order :-

ORDER

Bail application Exh.106 of applicant accused Rajesh @ Pandit Kamal Agarwal in connection with CR No. 10/2018 registered by Deccan police station, is rejected.

Pune.

Date :- 1st June, 2020.

(Aniruddha Y. Thatte),
Special Judge (under MCOC 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	01.06.2020
Order signed by PO on	03.06.2020
Order uploaded on	03.06.2020