

MHRG170005832023



IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL SESSIONS
JUDGE, PANVEL, DIST.RAIGAD
ORDER BELOW EXHIBIT-8 AND 28
IN SPECIAL (MCOCA) CASE NO.28/2023
(Dated 09/11/2023)

1] The application at Exh.8 is moved by accused No.3, whereas application at Exh.28 is moved by accused No.2, for grant of bail in C.R.No.159/2023, registered with Nhava Sheva police station, for offence p/u/sec.364 (A), 386, 120 (B), 323, 342, 506 (2), 109 of Indian Penal Code and p/u/sec.3, 25 of Arms Act and under section 3(1)(ii), 3(2), 3 (4) of Maharashtra Control of Organised Crime Act 1999.

2] As both the applications arise out of same crime, common order is passed.

3] Accused No.3 in his application at Exh.8 submits that, he was arrested on 05/10/2022 and since 13/10/2022 he is in judicial custody. This is his second bail application. The earlier bail application was rejected, as investigation was not completed. Now charge-sheet is filed and, hence, the second application. Accused No.3 submits that, he is permanent resident of village Gavhan, he has his family. According to him, he is driver of the co-accused Deshmukh and only for this reason he is arrested. Further he submits that he is ready to abide all the conditions

and pray for release on bail.

4] The accused No.2 in his application Exh.28 submits that, initially he was arrested on 14/10/2022. Thereafter charges under the Maharashtra Control of Organised Crime, Act 1999 were invoked and again this accused was taken in custody. At present he is in judicial custody. According to him, he is falsely implicated by the complainant. There is delay of 11 months for lodging of the FIR. No specific role is attributed in the charge-sheet. It is submitted that prosecution alleges that, on 08/11/2021, present accused No.3 abused the workers of complainant. It is alleged that on 09/11/2021 at 01.00 a.m. in the night present accused alongwith Nilesh Deshmukh, visited stone crushing plant of the complainant stopped his work. It is alleged that, that time absconding co-accused Nilesh Deshmukh demanded Rs.1,00,000/- as ransom.

5] Further it is submitted that, the offence p/u/sec. 364A, 386, 323, 342, 506, 109 of Indian Penal Code and offence under Arms Act, are not applicable. It is submitted that present applicant/ accused No.2, for the first time is arrested and there is no single previous crime. There is no material, of accused being member of organized crime syndicate and there is no continuing unlawful activity. It is submitted that, accused No.2 is resident of Gavhan and he has deep roots in the society and is ready to abide all the conditions.

6] Ld.Special prosecutor opposes bail applications. Prosecution through Special Public Prosecutor, has filed at Exh.30 and 31 respectively.

7] Heard Ld.Adv.S.J.Patil for accused No.3 and Ld.Adv. Macchindra Bodke for accused No.2. Heard Ld.Special Prosecutor Shri Mahesh Mule.

8] Ld.Adv. for accused No.3 Mayur Koli submitted that, present accused is arrested only on suspicion as he is employee of the co-accused. He submitted that accused No.3 has no criminal antecedents. Further Ld.Adv. pointed out statement of informant, supplementary statement of informant. It is submitted that, there is no evidence of CCTV footage. It is submitted that, house search panchanama shows situation of the house of the accused and his standard of living. He cannot be member of an organised crime syndicate.

9] Ld.Adv.for accused No.2 Uttam Deshmukh submitted that, there is no evidence except a non-cognizable case. It is submitted that, this accused was illegally detained before FIR. It is also submitted that present accused has no criminal antecedents and hence, MCOC Act cannot be made applicable.

10] Before dealing with the merits of the bail applications, it is necessary to mention sub-section (4) of section 21 of the Maharashtra Control of Organised Crime Act, 1999.

Section 21 (4) :-

Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless

- a) the Public Prosecutor has been given an opportunity to appose the application of such release ; and
- b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

11] In the present case admittedly the Ld.Special Prosecutor is given an opportunity. As the application is opposed, it is to be ascertained whether there are reasonable grounds for believing that, suspect is not guilty of organised crime and that he is not likely to commit any offence, while on bail.

12] Ld.Adv.for both the accused submitted that, both accused have no criminal antecedents and there are no previous charge-sheets against them. On this point Ld.Special Prosecutor pointed out the decision of Hon'ble Apex Court in the case of **Kavitha Lankesh Vs. State of Karnataka 2022 12 SCC 753.** In this decision Hon'ble Apex Court laid down that, for the offence punishable under MCOC Act 1999 against any person and when there is no previous offence registered against him, the material which indicate that he happens to be member of organised syndicate and it can be established through material shows nexus

with the accused who is the member of the crime syndicate.

13] Ld.Special prosecutor also relied on the decision of **Rajendra Bhau Patole Vs. State of Maharashtra 2022 SCC Online Bom 696**. In this decision Hon'ble Parent High Court laid down that, *“for the applicability of the provisions of MOCC Act 1999, it is not necessary that, same set of accused should commit the crime every time”*.

14] Ld.Adv.for accused No.2 placed reliance on the case of **Atulbhai Vithalbhai Bhanderi Vs. State of Gujrat (Supreme Court of India) Laws (SC) 2023-5-23**. In this case, *“there was only one case against the accused and the FIR was being quashed. Hence, in such circumstances Hon'ble Apex Court set aside the judgment of conviction of the Hon'ble High Court of Gujrat”*.

15] Ld.Adv.for accused No.2 placed reliance on the case of **Maruti Navnath Sonawane Vs. The State of Maharashtra High Court Bombay, Criminal Appeal No.198/2022**. In this decision before the Hon'ble Parent High Court *“there was no prima facie material of overt act or omission and the approval and sanction was without application of mind, hence, bail was granted”*.

16] Ld.Adv.for accused No.2 also placed reliance on the case of **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujrat Supreme Court of India, Special Leave to Appeal No.1815/2022**. In this case *“there was only one charge-sheet and*

hence bail was granted". And on the case of **Hemant Dirajlal Banker Vs. State of Maharashtra High Court Bombay Criminal Application No.488/2020 decided on 22/06/2023.** In this case *"the crimes registered were quashed as the applicant/accused were not indulged in any continuing unlawful activity."*

17] Ld.Special Prosecutor pointed out the decision of **Farman Imran Shah @ Karu Vs. State of Maharashtra Cri.Appeal No.12/2014.** In this decision Hon'ble Parent High Court has laid down a law that *"FIR is not a encyclopedia"*. Further reliance is placed on the decision of **National Investigation Agency Vs. Zahoor Ahmed Shah Wat ali (2019) 5 SCC 1** In this decision Hon'ble Apex Court while dealing with a matter under unlawful activities (Prevention) Act 1967, has laid down the manner and approach of exercising discretion. It is laid down that *"while dealing with the bail application, Court is not required to examine merits, demerits and credibility of evidence or admissibility or inadmissibility of documentary and oral evidence"*.

18] In light of these decisions, the first submission on behalf of both the accused is that they are not members of the alleged organised crime syndicate, it be noted that at this stage it is only to be examined whether they have nexus with the prime co-accused, the leader of the syndicate. For this the material on record is that, house of accused No.2 is adjacent to the alleged leader of the crime syndicate. The investigation agency has placed on record call detailed records of the accused No.2, who

was constantly in touch with co-accused and Special Prosecutor points out a confessional statement of co-accused Jitendra Deshmukh.

19] If the statement of the complainant and the witnesses are cumulatively considered, then, there is prima facie material which connects the present accused No.2 with the alleged leader of the crime syndicate. The CDR, which according to the prosecuting agency, is still being investigated and will form part of the charge-sheet as per section 173 (8) of Cr.P.C., shows alleged involvement and nexus. This is the material against accused No.2.

20] In respect of accused No.3 the material on record is about call details being under investigation and prima facie according to prosecution this accused was present on 14/12/2021 at the site of stone crushing business of the complaint and was in contact with co-accused, is placed on record. Besides this the vehicle brown colour Bolero jeep bearing No.MH46/BF-5985, was allegedly seized at the instance of accused No.3.

21] Thus I find that, there is prima facie material in the charge-sheet and also in the further investigation which is being still in progress., both accused have alleged nexus with the organised crime syndicate. This observation is based on the prima facie material made available before me and for the purpose of

deciding present applications. There is no reasonable ground to believe that, both accused have not committed the crime. Further there is no material to show that accused will not commit any crime if enlarged on bail because prima facie nexus is established at this stage. Hence, I pass following order.

ORDER

1. Application Exh.8 and Exh.28 stands rejected.
2. Inform concerned.
3. Copy of bail order is forwarded to Taloja Central Prison by E-mail.

Panvel
Dated :-09/11/2023

(Jairaj D.Wadne)
Spl MCOCA Judge, Panvel-Raigadad

I affirm that the contents of this PD.F file order are same, word to word, as per the original order.

Name of the stenographer : S.J.Sheth
Name of the Court : Additional Sessions Judge,
Panvel Raigad
Date of dictation : 09/11/2023
Dictation transcribed on : 10/11/2023
Order signed by the P.O.on : 10/11/2023
Order uploaded on : 10/11/2023