

MHRG170010322020



ORDER BELOW EXH. 39
IN SPECIAL (MCOC) CASE NO.106/2020
NHAVA SHEVA C.R.NO.79/2017
THE STATE OF MAHARASHTRA V/S. PRAVESH RAMPOOJAN
CHOUDHARI AND OTHERS
(PASSED ON 09th DAY OF DECEMBER, 2022)

This application is on behalf of the applicant/
accused-Omprakash Kantaprasad Rajbhar @ Prakash vide
Section 439 of the Code of Criminal Procedure to enlarge him on
bail.

2. This application is strongly opposed on behalf of
prosecution as per reply Exh.40.

3. Points for the determination and my findings thereon
for the reasons stated below ;

SR. NO.	POINTS	FINDINGS
I.	Whether grounds are justified to release the applicant/accused on bail vide Section 439 of the Code of Criminal Procedure ?	Yes.

II.	What Order ?	The application is Allowed.
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REASONS

4. Perused application, say filed. Heard learned advocate Shri.M.M.Gunjai for the applicant/accused, as well as learned A.P.P. Shri.C.Y.Patil for the State.

AS TO POINTS NO. I AND II :

BRIEF FACTS OF PROSECUTION :

5. The informant-Umeshkumar Laxmiprasad Avasthi was a supervisor in a transport company. The said company has 6 motor trailers for the business of transport in between J.N.P.T Port to concerned M.I.D.C. The work of transport of the goods to import to M.I.D.C Taloja assigned to the said company. On 14.08.2017, the driver of the said company namely Rahul Jaipratap Kumar (absconding accused) carried motor trailer No.MH-46/H-6137 containing 180 fiber drums of agro-chemicals worth Rs.1,80,00,000/-. He was asked to park the trailer in M.I.D.C parking. On 15.08.2017, his phone was switched off and the said trailer and this accused have not found. During

course of search, the said motor vehicle was found on Mumbai -Agra road. It was containing agro-chemical weighing 8100 kg amounting to Rs.1,63,56,900/-.

6. On that count, the informant lodged the report Dated 22.08.2017 at Police Station, Nhava Sheva. The Police Station Nhava Sheva registered Crime No.79/2017 for the offence under Section 407 of the Indian Penal Code against accused driver Rahul Kumar. During investigation, name of present applicant/accused and other accused were disclosed. Later on, the police added Section 465, 468, 471, 34 of the Indian Penal Code and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act (MCOCA) against the present applicant/accused and other accused.

7. The applicant/accused is arrested on 25.10.2017 and produced before the Court. Initially the applicant remanded to police custody till 06.11.2017 and extended till 10.11.2017. Thereafter remanded to judicial custody as per order Dated 10.11.2017. Presently, the applicant is in judicial custody.

WHETHER GROUNDS OF BAIL ARE MADE OUT ?

8. Initially the report is lodged against the driver- Rahul

Kumar. He is absconding. After completion of investigation, police filed charge-sheet against accused No.1 to 5. Present applicant is the accused No.3. The application for bail of accused No.2 - Vijay Namdeo Amale and accused No.5-Santosh Jaiprakash Rajbhar is allowed by my learned predecessor as per order Dated 15.02.2022. My learned predecessor observed that these accused are behind bar from last four and half years and there is no propriety to let them behind bar. In the light of role of those accused, they are extended on bail. Further the application of bail of accused No.4-Ghanshyam Dharmaraj Gupta vide Exh.33 is allowed by this court as per order Dated 30.09.2022. The application for bail of accused No.1-Pravesh Rampoojan Choudhari is allowed by this court as per order Dated 30.09.2022 below Exh.31.

9. In the light of reply on behalf of prosecution and on perusal of the copy of charge-sheet, it appears that the absconding accused - Ranjitsingh Harpalsingh Dhillon is the kingpin of the crime. According to prosecution, the present applicant is the gang leader and he has plotted the crime. The recovery of stolen articles was from the accused No.2-Vijay Amale.

10. Apparently the stolen article is immediately seized.

The driver who has tried to misappropriate the valuable property is still absconding. According to the prosecution, the accused charge-sheeted are members of the organized crime. On that count, learned advocate of applicant strongly objected application of Section 3 of the MCOC Act. To buttress his submission, he relied on the observation of Hon'ble High court in the case of **Govind Sakharam Ubhe V/s. State of Maharashtra 2009 ALL MR (Cri)1903** wherein it is held, "*MCOCA contemplates a situation where a group of persons as members of organized crime syndicate indulged in organized crime. That is, they indulged in use of violence, threats of violence, intimidation etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.*"

11. Per contra, learned A.P.P Shri.C.Y.Patil relied on the observation of Hon'ble High Court in the case of **State of Maharashtra V/s. Jagan Gagansingh Nepali @ Jaggya 2011(5) Mh.L.J. 386** wherein it is held, "*following ingredients are necessary to make out the case of an organized crime -*

- i) *There has to be a continuing unlawful activities,*
- ii) *Such an activity will have to be by an individual, singly or jointly,*

- iii) *Such an activity is either by member of an organized crime syndicate or on behalf of such syndicate,*
- iv) *There has to be use of violence or threat of violence or intimidation or coercion or other unlawful means,*
- v) *Such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economy or other advantage for the person who undertakes such an activity or any other person or promoting insurgency.*

12. Having regard to the supra cited observation coupled with the role of present applicant in the light of reply by prosecution that present applicant has plotted the crime as such, stolen the articles and he has participated in the crime. The stolen articles are seized. The present applicant is behind bar for more than five years. The rest accused No.1, 2, 4 and 5 are released on bail. In the light of role of present applicant and his involvement according to the charge-sheet, there is no propriety to let him behind bar for further unending period.

13. The application of provisions of MCOCA to the role of present applicant is under close scrutiny. The accused No.1, 2, 4 and 5 are released on bail. The rule of parity has application to the present applicant. Thus the present applicant deserves for bail. I answer Point No.I in the affirmative. With this, I pass

following order ;

ORDER

1.	The application for regular bail vide Section 439 of the Code of Criminal Procedure on behalf of the applicant - Omprakash Kantaprasad Rajbhar @ Prakash is allowed.
2.	The applicant/accused be released on bail on furnishing P.R. and S.B of Rs.30,000/- (Rs. Thirty Thousand) with one surety on following terms and conditions ;
i.	The applicant/accused shall attend each and every date of hearing.
ii.	The applicant/accused shall assist to Investigating Officer whenever called under written intimation.
iii.	The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the accusations against him so as to dissuade him from disclosing such facts to the Court or to any police officer.
iv.	The applicant/accused shall not tamper with prosecution evidence in any manner.

3.	Inform to concerned Police Station accordingly.
	Dictated and pronounced in Open Court.

Place : Panvel.

**(K.G. Paldewar)
Additional Sessions Judge,
Panvel**

Date : 09.12.2022

Arguments heard on	23 rd Day of November, 2022
Judgment/Order delivered on	09 th Day of December, 2022
Dictated on	09 th Day of December, 2022
Transcribed on	09 th Day of December, 2022
Checked and signed on	09 th Day of December, 2022

C E R T I F I C A T E

I affirm that the contents of this PDF file
Judgment/Order is same and as per the original
Judgment/Order.

Name of the Stenographer : P.S.Mhatre
Name of the Court : Additional Sessions Court,
Panvel
Date of Judgment/Order : 09.12.2022
Judgment/Order signed on : 09.12.2022
Presiding Officer : K.G. Paldewar
Judgment/Order uploaded on : 09.12.2022