

CNRMHSN040010652020

ORDER BELOW EXH. 31 IN SPECIAL (MCOCA) CASE No. 42/2020

The State of Maharashtra...

...Complainant

-Versus-

Santosh Bhimrao Kolekar

....Accused

1] Accused No. 6 Santosh Bhimrao Kolekar has filed first application for grant of bail under sec. 439 of the Code of Criminal Procedure in C.R.No. 553/2020 of Police Station, Islampur for the offences punishable under sec. 302, 143, 147, 148, 323, 504, 506, 120-B, 188, 269, 270, 290, 291 r.w. 149 of the Indian Penal Code, 51(Kh) of Disaster Management Act, Rule 11 of Covid-19 Rules, 142 of Maharashtra Police Act and 3(1) (i) (ii), 3(2), 3(3), 3(4), 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as "MCOC Act"). Accused No. 6 was arrested on 01/07/2020 and remanded to PCR till 14/07/2020. Thereafter he was remanded to Magisterial custody.

2] The facts of the prosecution case are that, deceased Santosh Rakhamaji Kadam and accused No. 6 and co-accused were acquainted with each other. Co-accused Ajit Patil has dispute with deceased Santosh on account that he was not working with his gang and there was altercation between them on 28/06/2020 at about 11.30 p.m. near hospital of Dr. Sangram Patil at Islampur. On 29/06/2020 at about 12.30 a.m. Accused Nos. 1 to 3, 5, 6 and child in conflict with law Pratik @ Pilya Suresh Patil came on motor cycle and unlawfully assembled in front of the house of informant Sharad

Vasant Kadam situated at Ninainagar Chowk. Co-accused No. 2 and 5 unlawfully entered in the prohibitory area inspite of externment order against them. Co-accused Nos. 2, 3, 5, accused No.6 and child-in-conflict with law i.e. accused No. 4 abused deceased Santosh and assaulted him by fists and kicks. They caught hold him and accused No. 1 assaulted him on his chest and stomach by means of knife. Due to which he sustained grievous injuries. Thus accused Nos. 1 to 7 committed criminal conspiracy and thereby committed murder of deceased Santosh. Hence the informant lodged the report.

3] Perused the application, say of learned A.P.P. and documents on record. Heard learned advocate Shri. V.S. Kaingade for accused No.6 and learned A.P.P. for state at length. The charge-sheet came to be filed on 23/12/2020 before Special Court under MCOC Act.

4] According to learned advocate for accused No. 6 he has been falsely implicated in the crime. He has no nexus with the crime. So, the offences under MCOC Act are not applicable. No evidence collected to show that accused No. 6 has gained movable or immovable property by use of threat or other unlawful means. There is no compliance of section 18 of MCOC Act. The name of accused No. 6 is not specifically mentioned in the FIR and report of informant. Even the Test Identification parade was not conducted when there are allegations of involvement of three unknown persons. As accused No. 6 is not involved in any crime, he is not member of organized crime syndicate. So he is entitled for bail. He is ready to abide conditions imposed, if any. After completion of investigation charge

sheet came to be filed in the Court. Accused is innocent and falsely implicated in this crime. He has permanent place of residence at Islampur, Tal. Walwa, Dist. Sangli. There is no apprehension of tampering of witnesses as charge sheet came to be filed. He is law abiding person. He is not likely to flee from justice, if released him on bail. Therefore, he prayed for bail of accused No. 6.

5] The learned APP has strongly resisted the application by filing say (Exh.33) stating that alleged offence is of serious nature. Accused No. 6 is habitual offender and 5 offences were registered against him in various police stations. In the statements of witnesses the name of accused No. 6 is disclosed. Accused No. 6 is member of the gang and committed conspiracy with gang leader i.e. accused No. 1 and other co-accused. There is possibility of tampering of evidence by accused. There is prima facie material to show the complicity of accused No. 6 in the crime. Hence, ld. APP prayed for rejection of application.

6] Learned A.P.P. for state vehemently submitted that the name of accused No. 6 mentioned in the report. During the investigation it was transpired that accused No. 6 is the member of the gang whose leader is accused No. 1. Number of offences are registered against accused No. 6 as per details given by I.O. in his say (exh.33). Thus, provisions of MCOC Act are attracted.

7] Learned A.P.P. further argued that the compliance of section 18 of the MCOC Act is proper. Whether sanction under section 23 of MCOC Act is legal or not will be decided on the basis of

evidence on record.

8] On going through the rival arguments of both the parties, whether at this juncture it is necessary and proper to decide whether section 3 of MCOC Act is applicable and there is proper compliance of section 18 and 23 of MCOC Act. The learned advocate for accused No. 6 vehemently submitted that, accused is not member of gang of accused No. 1 and he has not committed more than one offence with accused No. 1. The learned A.P.P. opposed the said argument on the ground that it is not the stage to consider the argument advanced on behalf of accused on the point of applicability of provisions of MCOC Act. It is to be noted that while deciding the bail application it is not necessary to consider the merit and demerit of the case.

9] It is to be noticed that for entitling the bail application there are different norms to scrutinize the case of prosecution. It is also born in mind that as per section 17 of MCOC Act there are special Rules of the evidence. However, for deciding the bail application provisions of section 439 of Cr.P.C. are applicable.

10] Admittedly on going through the FIR, it reveals that, name of accused No. 6 is not mentioned in the FIR and report. Admittedly during the investigation it was transpired that accused No. 1 is leader and accused Nos. 2 to 7 are members of that gang.

11] The approval order shows that other 5 offences have been registered against accused No. 6 at different police stations. The learned advocate for accused No. 6 submitted that out of the said

offences accused No. 6 is acquitted of 2 offences. He has further submitted that provisions of MCOC Act cannot be invoked the earlier offences have not been committed by and on behalf of gang by accused No. 6. But they are committed in individual capacity. It is imperative on part of the prosecution to establish prima-facie some nexus between the past crimes at the discredit of the accused No. 6 and the present crime, which has not been shown by the prosecution nor the material on record suggests and indicates such nexus. It prima-facie appears from record that informant and some of the witnesses have stated names of accused No. 6 in their statements under section 164 of Cr.P.C. It also appears that, there are criminal antecedents against accused No. 6. So there is no sufficient material to show the involvement of accused in the present offence.

12] Learned advocate for accused No. 6 relied on the following case-laws.

1. Central Prison, Mumbai Vs. The State of Maharashtra reported in 2021(2) AIR Bom. R (Cri) 130 and
2. Akash Ananda Aaglave Vs. The State of Maharashtra in Criminal Bail Application No. 360 of 2020.

I have carefully gone through the above case laws. With great respect to the Hon'ble High Court, the guidelines given in the case laws cited supra in respect of grant of bail regarding the MCOC Act are squarely applicable to the present case.

13] It is an admitted fact that charge sheet came to be filed. This is the first application filed by accused after filing of charge sheet. In the facts and circumstances of the case, prima facie it

appears that material on record does not suggest the involvement of accused No. 6 in the crime. Moreover, there is no material to show that accused will use his liberty to subvert justice or tamper with the evidence. Admittedly, at the stage of bail, merit and demerits of the case, cannot be considered.

14] It appears from record that the name of accused No. 6 is not mentioned in the FIR and report. The informant has stated the name of accused No. 6 in his statement under section 164 of Cr.P.C. The absence of name of accused in FIR is itself very significant. It prima facie appears from record that omnibus allegations are made against accused No. 6. The reliance is placed on Call Detail Records to show that accused No. 6 is in contact with co-accused Nos. 1 & 7. But merely being in contact with each other cannot be said to establish nexus between accused No. 6 and his involvement in the crime.

15] In the peculiar circumstances of the case, I found no substance in the apprehension raised by the I.O. that there is likelihood of tampering with prosecution witnesses and evidence by accused No. 6 if he will be released on bail. Considering the above reasons, it appears that, this is a fit case to exercise the discretion of granting bail.

16] In the circumstances of the case in my opinion, no purpose will be served by further detaining accused No. 6 in jail. The apprehension of the Investigating Officer, can be met with by imposing certain conditions on the accused No. 6. Considering the above reasons, accused No. 6 is entitled for grant of bail with certain

conditions. Hence, I proceed to pass the following order :-

ORDER

1. Application is allowed.
2. Accused No. 6 Santosh Bhimrao Kolekar, in C.R.No. 553/2020 of Islampur Police Station, be released on bail on his executing P. R. Bond of Rs. 50,000/- (Rs. Fifty Thousand only) with solvent surety in the like amount for the offence punishable under sec. 302, 143, 147, 148, 323, 504, 506, 120-B, 188, 269, 270, 290, 291 r.w. 149 of the Indian Penal Code, 51(Kh) of Disaster Management Act, Rule 11 of Covid-19 Rules, 142 of Maharashtra Police Act and 3(1) (i) (ii), 3(2), 3(3), 3(4), 3(5) of the Maharashtra Control of Organized Crime Act, 1999.
3. Accused No.6 shall not tamper with the evidence or attempt to influence or contact the informant, witnesses or any person concerned with the case.
4. Accused No. 6 shall not pressurize the informant and prosecution witnesses.
5. Accused No. 6 shall not indulge in similar type of offence or any other offence.
6. Accused No. 6 shall attend the Court regularly.
7. Failure thereof shall result in giving right to the prosecution to move for cancellation of the bail.

Date:10/12/2021.

Sd/-
(Rajshri P.Pardeshi)
Special Judge (MCOCA)
Islampur.

.. 8.. Special (MCOCA) Case No.42/2020 (Exh.31)

CERTIFICATE

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

Name of the Stenographer : Shri B.M.Patil, Steno, Gr. I
Court Name : Dist. Judge – 2 & Special Judge,
(MCOC Act)
Date of Order : 10/12/2021
Signed by P.O. on : 14/12/2021
Uploaded on : 14/12/2021