

CNRMHSN040010652020

ORDER BELOW EXH. 59A IN SPECIAL (MCOCA) CASE No. 42/2020

The State of Maharashtra...

...Complainant

-Versus-

Pratik @ Pillya Suresh Patil

....Accused

1] Accused No.3 Pratik @ Pillya Suresh Patil has filed this second application for grant of bail under section 439 of the Code of Criminal Procedure in C.R.No. 553/2020 of Police Station, Islampur for the offence punishable under sections 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 was arrested on 29/06/2020 and remanded to PCR till 08/07/2020. Thereafter he was remanded to Magisterial custody.

2] After going through FIR the facts of the prosecution case are that, deceased Santosh Rakhamaji Kadam and accused No. 3 and co-accused were acquainted with each other. Co-accused Ajit Patil had dispute with deceased Santosh on account that he was not working with his gang and there was altercations between them on 28/06/2020 at 11.30 p.m. near hospital of Dr. Sangram Patil. On 29/06/2020 at about 12.30 a.m. accused No. 3, co-accused Nos. 1, 2, 5, 6 and child in conflict with law Hrushikesh Sharad Bhandare came on motor cycle and unlawfully assembled in front of the house of

informant Sharad Vasant Kadam situated at Ninainagar chowk. accused No. 3 and co-accused 2, 5 and 6 and child in conflict with law abused deceased Santhosh and assaulted him by fists and kicks. They caught hold him and accused No. 1 assaulted him by means of knife on his chest, stomach. Due to which he has sustained grievous injuries. Thus accused Nos. 1 to 7 committed criminal conspiracy and thereby caused murder of deceased Santosh. Hence the informant lodge the report.

3] Perused the application, say (Exh.61) of learned Spl. P.P. and documents on record. Heard learned advocate Shri C.R. Patil for accused No.3 and learned Spl. P.P. for state at length.

4] According to learned advocate for accused No. 3 he has been falsely implicated in the crime. He has no nexus with the crime. The role attributed to accused no.3 does not attract section 302 of the Indian Penal Code. The evidence adduced by prosecution does not show that there is criminal conspiracy between accused persons to commit present offence. Post Mortem report does not show any kind of injury which can be possible due to blow of fists and kicks. Accused no.3 is behind the bars since last 3 years. Only two offences including this case are registered against the present accused. No evidence collected to show that accused No. 3 has gained movable or immovable property by use of threat or other unlawful means. He is not member of organized crime syndicate. So he is entitled for bail. He is ready to abide conditions imposed, if any. 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. 3.

5] The learned Spl. P.P. resisted the application by filing say (Exh.61) stating that alleged offences are of serious nature. Accused No. 3 is member of the gang and committed conspiracy with gang leader i.e. accused No. 1 and other co-accused. Accused No. 3 is habitual offender and 4 offences including present crime were registered against him in various police stations. The blood stained clothes on the person of present accused were seized. There is possibility of tampering of evidence by accused. There is prima facie material to show the complicity of accused in the crime. Hence, ld. Spl. P.P. prayed for rejection of application.

6] Learned Spl. P.P. for state vehemently submitted that name of accused No. 3 mentioned in the report. During the investigation it was transpired that accused No. 3 is the member of the gang whose leader is accused No. 1. Number of offences are registered against accused No. 3 as per details given by I.O. in his say (exh.61). Thus, provisions of MCOC Act are attracted.

7] Learned Spl. 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. 3 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 Spl. 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. It prima facie appears from record that informant and other witnesses have stated name of accused No. 3 in their statements under section 164 of Cr.P.C. It also appears that, there are criminal antecedents against accused No. 3.

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. 3 is mentioned in the FIR. Admittedly during the investigation it was transpired that accused No. 1 is leader and accused Nos. 2 to 7 are members of that group.

11] The approval order shows that other 3 offences have been registered against accused No. 3 at different police stations. Learned

Advocate for accused No. 3 submitted that provisions of MCOC Act cannot be invoked as two of the earlier offences have not been committed by and on behalf of gang by accused No. 3. But they are committed in individual capacity. There is no sufficient material to show the involvement of accused No. 3 in the present offence. Though it is submitted by the learned counsel for accused no.3 that accused is not member of gang of accused No. 1 and he has not committed more than one offence, documents produced on record by the prosecution prima facie shows the involvement of the present accused in other three crimes. Report and statements of witnesses also disclose the presence of accused at the time of incident.

12] This is the second application filed by accused No.3 after filing of charge sheet. It appears from the record that there is prima facie material to show complicity of accused in the commission of crime. In the facts and circumstances of the case, prima facie it appears that specific role is attributed to accused. There are circumstances available on record, which prima facie indicates that said accused is involved in the alleged offence. The alleged offence is against human body and is of serious nature. Accused charged with committing serious offences and punishment is severe one in the event of conviction. Moreover, there is 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.

13] It appears from record that there is prima facie material against accused No. 3. It further appears that accused and

witnesses are residents of same place. Hence, I found substance in the apprehension raised by the ld. Spl. P.P. that there is likelihood of tampering with prosecution witnesses and evidence by accused if he will be released on bail. It prima facie appears that there is likelihood of committing similar type of offence and there is reasonable apprehension of witnesses being tampered. Considering the above reasons, it appears that, there is no change in circumstances to consider this application. Therefore, this is not a fit case to exercise the discretion of granting bail. Hence, I proceed to pass the following order.

ORDER

Application is rejected.

Date: 19/06/2023.

(Rajshri P.Pardeshi)
Special Judge, (MCOC Act)
Islampur

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 M.J. Patil, Steno, Gr. I
Court Name : Dist. Judge – 2 & Special Judge,
(MCOC Act)
Date of Order : 19/06/2023.
Signed by P.O. on : 19/06/2023.
Uploaded on : 20/06/2023.