

ORDER BELOW Exh. 56

1. Read application and say filed by learned APP at Exh. 57. Heard learned advocate Shri. A. N. Shaikh for accused No. 3 and APP Shri. N. B. Gunde for the prosecution. Perused record of the case.

2. This application is filed by accused No. 3 for enlargement on bail in offences punishable under section 395, 420 read with 34 of Indian Penal Code. It is submitted in the application that, the accused was arrested on 23/05/2021 and he is in Magisterial Custody since 24/05/2021. He was arrested on suspect and he is not involved in this case at all. He has not committed any offence. His name was given by other accused. He is only earning member of his family. He is poor and innocent person. His wife and children are dependent on him. Since six months they are starving for food, because the accused is in jail. The trial of case may take long time. The accused is ready to abide by terms and conditions of bail. Already main accused No. 1 and other accused are released on bail. Hence, he prayed for releasing on bail on the ground of parity.

3. Learned APP objected the application and contended that, offences are serious in nature. The accused is prima facie involved in commission of offence. He is habitual offender. Already four witnesses are examined by the prosecution and only short evidence remaining to be led. The prosecution is ready to expedite the matter. There is possibility of tampering the evidence

of prosecution and absconding of the accused, if he is released on bail. Hence, he prayed to reject the application.

4. Considering the submissions of both parties and on perusing record of case, it reveals that, the offences registered against the accused are punishable under section 395, 420 read with 34 of Indian Penal Code. As per submissions made in the application, the accused was arrested on 23/05/2021. His supplementary charge sheet was filed on 29/08/2021. Yet, the charge of accused No. 3 is not framed. The charge was framed only against the accused No. 1, 2 and 5. Their case is part-heard and evidence of 4 witnesses is already recorded. But, thereafter the trial of case is kept in abeyance, because Special Case No. 321/2020 under M.C.O.C. Act is pending against the accused No.1. As per section 10 of M.C.O.C. Act, the trial of offence under that Act by Special Court shall have precedence over trial of any other case against the accused in any other Court and shall be concluded in preference of the trial of such other cases and accordingly the trial of such other cases shall remain in abeyance.

5. In view of this provision, the trial of this case is kept in abeyance and it can not be proceeded further until the decision of Special Case No. 321/2020. Yet, the charge is not framed against the accused No. 3. Therefore, no purpose would be served by keeping him in jail. After framing of charge against accused No. 3, the witnesses already examined are to be recalled, if required for further examination-in-chief and cross-examination. The name of

accused is not mentioned in First Information Report. There is no recovery of stolen property from the accused. The prosecution submitted that, the accused is habitual offender, but no document is produced on record in support of the same. Hence, it is held that, the accused No. 3 is entitled for releasing on bail subject to certain terms and conditions for securing his presence during trial. Therefore, I pass following order.

ORDER

1. The application is allowed.
2. The applicant/accused No. 3 Shri. Sapalya Bhimsha Shinde is released on executing personal bond of Rs. 30,000/-, with one or two solvent sureties in like amount subject to following conditions -
 - i) He shall produce his residential proof and mobile number before the Court.
 - ii) He shall not tamper the evidence of prosecution.
 - iii) He shall remain present in the Court on each date, without fail.
 - iv) He shall not commit any other offence during period of bail.

(Smt. Richa D. Khedekar)
Additional Sessions Judge,
Solapur.

Date : 29/11/2021

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order are same word to word as per the original Judgment/Order.

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| (a) | Name of the Stenographer | : Mahesh Arjun Kore, Steno (Grade-I) |
| (b) | Court | : Ad-hoc District Judge - 2 & ASJ, Solapur. |
| (c) | Date of Judgment/Order | : 29/11/2021 |
| (d) | Judgment/Order signed by the Presiding Officer on | : 29/11/2021 |
| (e) | Judgment/Order uploaded on | : 30/11/2021 |

