

ORDER BELOW EXH.51 IN SPECIAL (MCOCA) CASE NO. 145 OF 2024
(CNR No. MHST-01-000533-2024)

(The State of Maharashtra Vs. Suraj Vasant Bodare & Ors.)

1] Accused **Tanaji Nathaba Lokhande** applied for regular bail. Prosecution has charged the applicant-accused along with other accused for commission of the offence punishable under Sections 307, 386, 395, 397 of the Indian Penal Code, 1860 (In short, 'IPC'), Section 4 r/w. 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4), 4 of the Maharashtra Control of Organized Crime Act, 1999 (In short, 'MCOCA')

2] Prosecution case in short :-

A] Informant P. S. K. lodged report dated 26.11.2022 that he is construction site trainee Engineer in the R. S. Mane-Civil Engineer and Contractor Company for last three months. The said company has undertaken construction of water storage Tank in the land Gat No. 482 of village Khamgaon.

B] Two days prior Dnyaneshwar @ Nanya Vasant Bodare and one unknown person came on the motorcycle at the said construction site. The said accused Dnyaneshwar asked him who is the contractor of the said construction work to which the informant replied that Rajendra Mane is the contractor. Thereafter, said accused demanded Rs.50,000/- to the informant stating that his brother Suraj Bodare has sent him for collection of Rs.50,000/- per month otherwise he will not be allowed to work there.

C] On 26.11.2022 at 7:30 AM, the neighbour Ichhya Dular Mulla made a phone call to the informant and informed him that both the persons who had been there prior to two days came on the construction site along with 5 to 6 persons. They were beating the labours stating that their owner contractor has not yet paid Rs.50,000- and therefore to stop the work. Therefore, the informant also went on the working site. At that time, 7 to 8 persons came on motorcycles. The accused Dnyaneshwar was on the rear seat on one motorcycle and he was holding Sword. Another person on the another motorcycle was also holding Sword, others were holding wooden planks. Dnyaneshwar asked to shut down the work of construction site stating that the another person holding Sword is his brother who is facing many criminal prosecution. The informant declined to stop the work. There upon when the accused Suraj was trying to dealt a blow of Sword on the head, the informant dodged the said blow but the Sword stuck on his leg. One another assailant had taken out Rs.10,000/- forcibly from the pocket of the informant. One another assailant had taken out mobile phone of the informant. The accused Dnyaneshwar was also trying to put his hand in the pocket of the pant to the informant, he assaulted him on his left hand, palm and wrist. He also taken out motorcycle keys of the informant. After this incident, the accused Suraj threatened to Girish, the informant and others to pay Rs.50,000/- within two days otherwise they will not be spared. Thereafter, all of the accused with the said accused flee away from the spot of incident.

3] Grounds for bail :-

A] The applicant-accused is innocent and he has been falsely

implicated in this case. He has not committed the offence as alleged in the FIR.

B] Prior to the application of the provisions of MCOCA Act, the applicant-accused was arrested and produced before the Ld. Judicial Magistrate First Class, Phaltan on 27.11.2022. He was kept in Police custody till 03.12.2022 and since thereafter he is in judicial custody.

C] The co-accused Sunny Mohan Bodare and Shrikant Gulab Bodare have been released on bail by observing that charge-sheet has already been filed after the investigation. With the said observation, the accused Sharad @ Babu Nandkumar Pawar is also been released on bail.

D] False FIR is lodged after two days delay with colourful story that extortion money Rs.50,000/- per month is demanded by the accused Dnyaneshwar in the name of the accused Suraj Bodare. The construction site is in the land of Gulab Laxman Ramoshi (Bodare) who is uncle of the accused Suraj Bodare. Said Gulab has gifted the said land to Gram Panchayat, Khamgaon on 28.04.2006 without obtaining any consideration. Therefore, there is no question of demanding money from the contractor. The co-accused Dnyaneshwar and Suraj were residing in same premises. The construction is going on for last six months. On 26.11.2022, the co-accused had been assaulted by Satish Mane and others three of his employees as he had gone to attend natural call. Thus, there was dispute between Satish Mane and co-accused Dnyaneshwar therefore said Satish Mane instigated the informant to lodge false report. Identification Parade was held after showing photograph of the accused to the witnesses. The arrest panchanamas are also pasted with photographs which itself prima facie

shows that the applicant-accused has been falsely implicated. There is no evidence against the applicant-accused except the identification parade.

E] The first requirement of Section 2(d) of the MCOCA that the applicant-accused had indulged into the continue unlawful activity is not fulfilled. Prima facie, there is no case against the applicant-accused under the MCOCA. There is nothing to show that past crimes have been committed by the applicant-accused on behalf of organized crime syndicate and that he is member of the Gang. Therefore, he is entitled for bail and Section 21(4) of MCOCA is not applicable in the present set of facts.

F] The applicant-accused is sole earning member of his family. There is nobody to take care of his family members. He is ready to cooperate the police machinery. He has no criminal antecedents. He will not misused the liberty, he is enlarged on bail. He will not tamper the prosecution evidence. He is permanent resident of his address given in the application. Also having properties there and hence question of absconding does not arise.

4] Reply to the application by APP at Exh. 53 :-

A] Investigation papers showed role attributed to the applicant-accused. He is active participant in commission of the offence.

B] He is member of crime syndicate. His name is disclosed during investigation and is amounting in commission of this crime. There is continuous unlawful activities. He is engaged and associated with Gang leader accused no. 1 by way of commercial transactions and financial

assistance as defined under Section 2(1)(a) (i)(ii) of MCOCA Act. Individual mens rea or motive is not required or necessary to prove the involvement of the persons in abetment of crime to be committed. The accused persons have been giving some undue economy benefits through various transactions and activities as like the present crime. The accused have been leading his crime syndicate since last 2 years by forming gang.

C] The role of the applicant-accused is linked with the other accused. He may kept the absconded accused away from the clutches of the law if he is released on bail. There are eye-witnesses therefore, the applicant-accused in collusion with the other accused may commit more serious offences. Hence, the application is prayed to be rejected.

5] I have heard Ld. Advocate for the applicants-accused and Ld. Spl. PP for State. Perused the FIR and investigation papers.

6] Main arguments of the Ld. Advocate for the applicant-accused is that filing of more than one charge-sheet prior to the sanction under the MCOCA and there was only single charge-sheet filed against the applicant-accused. Therefore, he submitted that the necessary legal requirement is not complied with. In support of his arguments, he relied upon the following judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court in following cases :

[a] *Mahipal Singh, Central Bureau of Investigation New Delhi & Anr. V/s CBI and Anr., 2014 Lawsuit (SC) 297*

[b] *Bhikubhai Dayaram Thanki, Jitendra Shantilal Modha, Chhotu @ Arvind Vitthalbhai Chkoudhary @ Patel,*

***Prasad Jagannath Shetty Chhotu @ Ghisaiwala @
Ravitsing Savindersing Bhadoriya @ Rajput, Nitin
Shantilal Modha Vs. The State of Maharashtra, 2018
Law suit (Bom) 1681***

Gist of both these judgments can be summarized that on the date of the offence there has to be submission of and cognizance of offences of specified nature in more than one charge-sheet within the preceding period of 10 years has to be satisfied.

7] The prosecution has mentioned in the charge-sheet that two offences are pending against the applicant-accused Tanaji. One is the present offence bearing C.R.No. 841 of 2022 and the previous offence was C.R.No.540/2021 wherein charge-sheet has been filed and cognizance has been taken by the competent Court. In the earlier offence bearing C.R.No. 540/2021, charge-sheet was filed on 06.03.2023 and its cognizance was taken on 16.03.2023. In the present crime there is sanction was accorded on 13.02.2023 when the sanction was given on 21.04.2023. The charge-sheet in the present case is also presented on 28.04.2023. Therefore, considering these dates, it is clear that on the dates of proposal for sanction and the sanction order. There was no pendency of more than one charge-sheet in the competent Court against the applicant-accused. Hence, on these grounds and settled position of law, case of the applicant-accused can be considered for bail.

8] The Ld. APP has argued that there is bar to grant bail to the applicant-accused of Section 21(4) of the MCOC Act. He submitted that before granting bail to the accused, the Court has considered the

grounds which would conclude to believe that the accused is not guilty of the offences levelled against him and he is not likely to commit any offence while on bail. In respect of this, he relied on the judgments as follows :

[a] *The State of Maharashtra V/s Vishwanath Muranna Shetty , 2012 ALL MR (Cri) 4095 SC*

[b] *Ranjeetsing Brahmajeetsing Sharma V/s State of Maharashtra, 2004 ALL MR (Cri) 2899*

[C] *Zakir Abdul Mirajkar V/s State of Maharashtra, SC Cri. Appeal no. 1125/2022*

9] As against this Ld. Advocate for the applicant-accused relied upon the judgment of the Hon'ble Supreme Court in the following cases:

[a] *Mohamad Iliyas Mohamad Bilal Kapadiya V/s State of Gurarat, 2022 LiveLaw (SC) 538*

[b] *Shri Girish Kumaran Nayar V/s State of Maharashtra, Bail Application no. 2241/2018*

[c] *Amit @ Biry Ramesh Kadam V/s State of Maharashtra, Bail Application no. 405 of 2021*

[d] *Dinesh Bhondulal Baisware V/s State of Maharashtra 2016 (4) Bom. C.R. (Cri.) 149*

[e] *Mangesh Manik Kanchan V/s The State of Maharashtra, Bail Application no. 1696 of 2014*

10] Admittedly, prosecution is relying upon Identification Parade to prove involvement of the applicant-accused in the present crime. However, there seems no strong circumstantial or other evidence which would establish that there was any conspiracy in commission of this

offence. In the case of Mangesh, cited above it has been observed that, *“Life flows and a member may repent and he may withdraw himself from the gang. A person may not remain a member of the gang throughout his life and therefore, it is draconian to permanently keep him under a hanging sword that he can be prosecuted under section 3(4) of the MCOC Act for any crime committed by any member of the gang. Therefore, penal section 3(4) is necessarily controlled by defining sections 2(d) and 2(e) of the Act. A power to grant bail in cases under the Act to be used if conditions under section 21(4) are fulfilled”*.

11] Therefore, considering the facts and material on record and in the case, in hand in view of the judgment in the case of Mangesh cited above, there are reasonable grounds to presume that the applicant-accused is not guilty of the offence as alleged. In the other words it would be said that the prosecution could not satisfied the first condition under Section 21(4) (b) of the MCOC Act. Regarding another condition that the Court to satisfy that the applicant-accused is not likely to commit any offence while on bail. His Ld. Advocate submitted that the applicant-accused has not criminal background which would prove that he has been hardened criminal even regarding future, necessary conditions can be imposed upon the applicant-accused. He further submitted that if at this stage it is presumed that in any case, he will commit offence in future, it will force him to be in the jail without he being proven guilt of any offence. He also drew my attention to the judgment of the Hon'ble Supreme Court in Mohamad Iliyas, cited above, wherein it has been observed that, a past of a criminal cannot be linked always with his future when he has not committed any

offence in the future, otherwise he would be completely denied the opportunity to improve and this is against basic principal of criminal jurisprudence.

12] In the case in hand, the applicant-accused is from the family of labour and agricultural family. Only one offence has been registered against him in the past. Obviously chance for reformation can be given to him by imposing necessary conditions while granting him bail. Hence, I pass the following order.

ORDER

1. Application Exh. 51 is allowed.
2. The applicant-accused **Tanaji Nathaba Lokhande** be released on executing the personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with one surety in the like amount, subject to following conditions :
 - a. The applicant-accused are directed not to enter Phaltan City during the trial of the case except to attend the hearing of the Court dates in this proceeding and other proceedings, pending against him.
 - b. applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer or tamper with the evidence.
 - c. he shall furnish copies of two documents as per the Rule 4 in para 12(1 to 6) of Chapter I of Criminal Manual, 1980 about residential address, alongwith the certificate of concerned police station

regarding physical verification of said residential address.

d. that he shall submit the list of at least three blood relatives with their detail residential addresses and also the addresses of their place of work alongwith the documentary evidence of correctness of the detail produced by him.

e. that, he and his sureties shall undertake to inform the police authorities as well as the Court granting bail, about the change of their residential addresses while on bail.

f. he will assist I. O. as and when required by him and shall not seek unnecessary adjournments.

(Pravin V. Chatur)

Place : Satara

Date : 24/06/2024

**Addl. Sessions Judge, Phaltan and
Special Judge (under MCOCA), Phaltan**

Dictated On	24.06.2024
Transcribed On	25.06.2024
Checked On	25.06.2024
Signed On	25.06.2024