

**ORDER BELOW EXH. 48 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 **Umesh Sanjay Khomane** 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. Katkar 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 arrested on 26/11/2022 in Crime

Register No. 841/2022, registered on 26/11/2022 at Phaltan Rural Police Station, Phaltan for the offences punishable under Sections 307, 386, 395, 397 r/w 34 of IPC and violation of Section 4 punishable U/s.25 of the Arms Act and Sections 3(1)(2), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act,1999 (hereinafter referred as 'MCOCA').

**B]** The allegations in the FIR does not attract provisions of the Indian Penal Code as regards to this applicant accused. He is innocent and he has been falsely implicated in this case. He has not committed the offence as alleged in the FIR.

**C]** Investigation is completed and charge-sheet has been filed.

**D]** The co-accused No.8 Sharad @ Babu Nandkumar Pawar, No.9 Shambhu Ananda Nanaware, No.11 Sunny Mohan Bodare and No.12 Shrikant Gulab Bodare have been released on bail.

**E]** Applicant-accused is a victim at the hands of the informant. He is the sole bread earner in his family, who is facing starvation and hardship since his arrest.

**F]** The applicant-accused is permanent resident of his address mentioned in the proceeding. He has old, sick and infirm mother and hence he will not abscond nor will tamper the prosecution evidence. He is ready to co-operate the trial. He undertakes to obey all the conditions, imposed upon him.

**4] Reply to the application by APP at Exh. 52:-**

**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 and his abetment to this crime. His name is disclosed during investigation. 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 MCOC 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 few years by forming gang. FIR is not encyclopedia and further investigation is going on according to the provisions of MCOCA.

**C]** The applicant-accused is beneficiary of illegal financial transactions being carried out by the accused No.1 with the help of other accused, including the applicant accused. Role of the applicant is linked with the accused No.1. 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) 168.**

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 three offences are pending against the applicant-accused Umesh. One is the present offence bearing C.R.No. 841 of 2022 and the previous offences were C.R.No.368/2019, of the offences punishable U/ss. 363, 364, 346, 307, 324, 143, 147 504 and 506 r/w 149 of the IPC, wherein charge-sheet was filed on 17/09/2019. Its prosecution is pending in R.C.C.No.333/2029, in the Court of Judicial Magistrate First Class, Phaltan. Accused No.1 Suraj, in this case and the applicant accused were also arrayed accused in the said prosecution. However, it was the case of kidnapping and there was sweeping and vague reference of the name of the applicant accused in the supplementary statement of the

concerned informant. There seems no prima facie material of the said offence had been committed as a member of organized crime syndicate for his financial benefits or of the organized syndicate.

8] Another previous was C.R.No.540/2021 wherein charge-sheet has been filed and cognizance has been taken by the competent Court. In this offence, charge-sheet was filed on 06/03/2023 and its cognizance was taken on 16/03/2023. In the present crime the sanction was accorded on 13/02/2023 and it 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.

9] 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.***

10] As against this Ld. Advocate for the applicant-accused relied upon the following judgments of the Hon'ble Supreme Court:

***[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 @ Biryra 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***

11] 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 2194) are fulfilled”.

**12]** 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. Other accused, No.8 Sharad @ Babu Nandkumar Pawar, No.9 Shambhu Ananda Nanaware, No.11 Sunny Mohan Bodare, No.12 Shrikant Gulab Bodare and Tanaji Nathaba Lokhande have been released on bail. Therefore, on the ground of parity this applicant-accused is also entitled for bail.

**13]** In the case in hand, the applicant-accused is from the family of labour and agricultural family. Two offences have been registered

against him in the past, but he is never been convicted. 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. 48 is allowed.
2. The applicant-accused **Umesh Sanjay Khomane** 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 is 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, along with 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.

Place : Satara  
Date : 16/07/2024

(Pravin V. Chatur)  
Addl. Sessions Judge, Phaltan and  
Special Judge (under MCOCA),  
Phaltan

Dictated On	16.07.2024
Transcribed On	16.07.2024
Checked On	16.07.2024
Signed On	16.07.2024