

ORDER BELOW EXH. 69 IN SPECIAL (MCOCA) CASE NO. 145 OF 2024

(CNR No. MHST-01-000533-2024)

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

Accused **Vaibhav Hanumant Chavan** 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 27/11/2022 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'). The applicant-accused was in Police Custody till 01.12.2022 which was extended up to 03.12.2022. Since thereafter, he is in Judicial Custody.

B] The accused is innocent and 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. He will not misuse his liberty if enlarged on bail. He is ready to co-operate further investigation, if any.

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] He is the sole bread earner in his family, who is facing starvation and hardship since his arrest, as there is nobody to look after and take care of his family.

F] The applicant-accused is permanent resident of his address mentioned in the proceeding and hence he will not abscond nor will

leave his place of residence. He will not tamper the prosecution evidence. He is ready to co-operate the trial. He undertakes to obey all the conditions, imposed upon him.

G] There is two day's delay in lodging the F.I.R. It is lodged after thought and in consultation only to harass the applicant-accused. The F.I.R. is created colourful story that extortion amount Rs.50,000/- per month is demanded by the accused Dnyaneshwar in the name of accused Suraj Bodare. The erection of new water tank is undergoing in the land previously owned by Gulab Laxman Ramoshi (Bodare), uncle of accused Suraj Bodare. The said land was gifted by him on 28.04.2006, free of cost to the Gram Panchayat, Khamgaon. Therefore, there is no question of demanding money from the contractor.

H] All the accused are not residing in the same village. They are knowing each other but they are having rivalry in political group of the informant. In this background, the allegations are not genuine but serious charges are levelled against them.

I] The applicant-accused is not arrested before holding enquiry or verifying his involvement in the present crime. After his arrest, the identification parade was held by showing his and the photographs of the other persons. Their arrest panchanamas are also pasted with the photographs. There is no evidence against the applicant-accused except the identification parade. This shows that he has been falsely implicated in this alleged offence.

J] Nothing incriminating has been seized from the applicant-accused. There is no recovery of alleged stolen articles from him. Therefore, this transpires that he is not involved in this alleged offence.

K] The Sanctioning Authority before granting Sanction under Section 23(1)(A) of the MCOCA has not considered the fact that the applicant-accused was not member of crime syndicate. There is no evidence to show that he is indulged in continuing unlawful activity as defined under Section 2(d) of the MCOCA. Thus, the first requirement of the said provision is not fulfilled.

L] The applicant-accused and other accused are not connected with each other. There is no case registered against him along with other accused or the Gang Leader. Therefore, the Sanction could not have been granted for prosecution under MCOCA. Hence, the case under Section 394 of the IPC and under Sections 3(1)(ii), 3(2), 3(4) and 3(5) of MCOCA is not made out.

M] There is no nexus between the past criminal activities and the present crime and it is also not established. There is nothing to show that the applicant-accused has committed the previous crimes on behalf of the organized crime syndicate.

N] The offences punishable under Sections 3(1)(ii), 3(2), 3(4) and 3(5) of MCOCA are applicable where member of the organized crime syndicate holds any property derived or obtained from commission of organized crime and Section 4 of the said Act is also applicable

against the person who possesses unaccountable wealth being member of crime syndicate. There is no iota of such evidence to fulfill the said requirements.

O] Even accepting entire material will not hold the applicant-accused guilty of the offences under MCOCA. Therefore, there is no bar under Section 29 of the MCOCA to release him on bail.

P] There are general and vague allegations in the F.I.R. Injuries sustained by the informant are not grievous in nature. They are not on vital parts to attract provisions of Section 307 of the IPC. It is alleged that injury was caused to his lower limb-right toe but there is no supportive medical evidence. The informant has created colourful story of sustaining said injury.

4] Reply by I.O through APP at Exh. 76:

A] The witnesses have stated about assault to the eye-witnesses Ichha Mulla, Rubiul Mulla, Miraj Mulla and the informant Pramod Katkar by means of wooden log, mobile handset has been seized in personal search. The wooden logs by means of which this applicant-accused and his co-accused used in commission of the offence have been seized as per Section 27 of the Indian Evidence Act.

B] Accused Ranjit Bhandalkar had taken out Rs.10,000/- forcibly from the pocket of informant and handed over it to the accused Suraj Bodare, who later on distributed the said amount and Rs.1000/- was paid to this applicant-accused. The remaining amount Rs.680/- out of Rs.1000/-has been seized from this applicant-accused. The

motorcycle Bajaj Pulser bearing no. MH-11-CR-6409 which was used in commission of the crime, has been seized from this applicant-accused. His clothes with stains like blood were seized from the applicant-accused. Following offences were registered against the applicant-accused.

Sr. No.	Name of Police Station	C. R. No.	Offence u/s. Sections
1]	Lonand Police Station	162/2016	392, 347, 506 r/w. 34 of the IPC
2]	Lonand Police Station	161/2016	1392, 341 r/w. 34 of the IPC
3]	Lonand Police Station	137/2016	384, 504, 506 r/w. 34 of IPC
4]	Vadgaon (Nimbalak) P.S.	164/2015	392 r/w. 34 of the IPC
5]	Phaltan Rural P. S.	600/2021	354, 354A, 354B, 452, 323, 504, 506 of the IPC
6]	Vadgaon (Nimbalak) P.S.	242/2021	307, 504, 506 r/w. 34 of the IPC
7]	Phaltan Rural P. S.	537/2019	27 of NDPS Act
8]	Phaltan Rural P. S.	841/2022	307, 386, 395, 397 of the IPC and Section 4, 25 of the Arms Act.

C] Provisions of Sections 3(1)(ii), 3(2), 3(4), 3(5) and 4 of MCOCA are found applicable and therefore, necessary sanction is obtained from the Competent Authority. The Sanction Order dtd. 13.02.2023 was acknowledged and accordingly the above said offences were added in the offence on 15.02.2023.

D] Accused Ranjit, Amar and Sachin are absconded. If the applicant-accused is granted bail, he will help these absconded accused to save them from arrest. The informant and three labours

are eye-witnesses. If he is released on bail, he may pressurize them. The applicant-accused will also abscond. Possibility cannot be ruled out of commission of more serious offence by forming Gang by the applicant-accused. Hence, the application is prayed to be rejected.

5] I have heard Ld. Advocate for the applicant-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 even if there might be registration of about seven offences against the applicant-accused, none of the remaining accused persons in this case were arrayed as accused in those earlier registered offences. It is also argued that there is no direct connection of the applicant-accused with the other accused. I have gone through the list of crimes registered against the applicant-accused and the other accused persons. None of the other accused were shown as co-accused of this applicant-accused in the above listed crimes registered against him. Moreover, it is also not the submission from the prosecution that anyone or all the earlier seven offences registered against the applicant-accused were committed in collusion with or in furtherance of common intention and at the behest of the Gang Leader accused no. 1 Suraj or any other accused persons. The prosecution could not point out connection of all the other accused persons with the applicant-accused in respect of the incidents allegedly occurred in the crimes registered against him. Moreover, there is no material which would establish that in the earlier registered offences, the applicant-accused had any financial

wrongful gain or had derived any property or is in possession of unaccountable wealth as required under the above said provisions of MCOCA. Therefore, for want of these necessary ingredients, it cannot be said that the applicant-accused is indulged in continuing unlawful activities as defined under Section 2(d) of MCOCA.

7] It is alleged that the accused Ranjit had withdrawn Rs.10,000/- forcibly from the pocket of the informant and handed over to the accused Suraj Bodare. It is also alleged that accused Suraj Bodare has distributed the said amounts out of which Rs.1000/- was given to the applicant-accused. He has spent some amount and remaining amount of Rs.680/- is seized from him. Accused Ranjit is absconded. There is no statement of accused Suraj under Section 27 of the Indian Evidence Act that he has distributed the amount and paid Rs.1000/- to the applicant-accused. There is no material from which the I.O. has assumed that accused Suraj paid Rs.1000/- to the applicant-accused and Rs.680/- is out of the said amount. Therefore, prima facie it cannot be said that the applicant-accused has obtained Rs.1000/- out of the stolen amount Rs.10,000/-.

8] The Investigating Officer has seized four wooden logs from the applicant-accused by taking recourse of Section 27 of the Indian Evidence Act. The Investigating officer objected that the eye-witnesses and other witnesses have stated that the accused have assaulted them by means of wooden logs. However, these are vague allegations. There is no material which would point out that the applicant-accused has been involved in commission of the offence.

Confession under Section 27 of the Indian Evidence Act is a weak type of evidence required to be proved during trial. Therefore, merely because of seizure of four wooden logs is not sufficient to say at this stage that the applicant-accused is involved in the continuing unlawful activities of organized crime syndicate.

9] The Investigating Officer has seized motorcycle bearing no. MH-11-CR-6409 from the applicant-accused. However, none of the witnesses have stated the said registration number of the motorcycle which was used by the culprits who had involved in the offence. Therefore, mere seizure of the said motorcycle cannot be a circumstance to connect the applicant-accused with the present crime.

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 Manik Kanchan Vs. The State of Maharashtra, 2015 SCC OnLine Bom. 6038***, 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 MCOCA 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 MCOCA 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 though it seems that earlier seven offences were registered against the applicant-accused, an opportunity can be given to him to prove that he is not been a hardened criminal and 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 Mohamad Bilal Kapadiya Vs. State of Gujrat, 2022 LiveLaw (SC) 538***, 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.

12] In the case in hand, the applicant-accused is the sole earning member of his family. He is permanent resident of his address given in the application. Seven 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.69 is allowed.

2. The applicant-accused **Vaibhav Hanumant Chavan** 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 : Phaltan
Date : 07/11/2024

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

Dictated On	07.11.2024
Transcribed On	07.11.2024
Checked On	07.11.2024
Signed On	07.11.2024