

ORDER BELOW EXH.88 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 no.2 **Dnyaneshwar @ Nanya Vasant Bodare** applied for regular bail. Prosecution has charged the applicant along with other accused for commission of the offences 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 the applicant and one unknown person came on the motorcycle at the said construction site. The said applicant asked him who is the contractor of the said construction work to which the informant replied that Rajendra Mane is the contractor. Thereafter, the applicant 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, again 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 applicant 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. The applicant asked to shut down the work of construction site stating that the another person holding Sword is his brother Suraj Vasant Bodare who is facing many criminal prosecutions of half murder and other like cases. The informant declined to stop the work. The informant also stated to the applicant that their work is going on, as per sanction and they will not stop the work. Thereupon when the accused Suraj was trying to dealt a blow of Sword on his head, the informant dodged the said blow but the Sword stuck on his leg, due to which he fell down. Thereafter, all the above said accused beaten the informant by wooden logs, stones and kicks and fist blows on all over body. 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 applicant was also trying to put his hand in the pocket of the pant of 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 the accused along with the applicant fled away from the spot of incident.

3] Grounds for bail :

A] The applicant 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 MCOC Act, the applicant 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 in Cri. Bail Appln. no. 198/2023 by observing that charge-sheet has already been filed after the investigation. With the said observation, the accused Sharad @ Babu Nandkumar Pawar and Shambhau Nanaware are also released on bail in Spl.(MCOCA) Case no. 65/2023. The co-accused Tanaji Nathaba Lokhande and Umesh Sanjay Khomane are also released on bail.

D] The first requirement of Section 2(d) of the MCOCA that the applicant had indulged into the continue unlawful activity is not fulfilled. Prima facie, there is no case against the applicant under the MCOCA. There is nothing to show that past crimes have been committed by the applicant 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.

E] All the recovery is completed. There is nothing to be recovered from the applicant and therefore, there is no purpose to keep the applicant behind bars. The alleged prosecution story is only on suspicious grounds.

F] The applicant is sole earning member of his family. There is nobody to take care of his family members. No offence whatsoever is made out against him. He will not misuse 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. Since long, he is residing at the given address in the proceeding. Hence, question of absconding does not arise.

4] Reply of the prosecution through APP at Exh.89 :

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

B] He is member of crime syndicate. Three accused persons Ranjit Kailas Bhandalkar, Amar Santosh Bodare and Sachin Dattatray Mandale are absconding and if the applicant is released on bail the said absconded accused cannot be nabbed.

C] There are three eye-witnesses who are labours and the informant is Civil Engineer on the construction site. If the applicant is released on bail, he will pressurize them and may also threaten them. There is possibility that the applicant may abscond. The applicant in collusion with the other accused may commit more

serious offences with members of his crime syndicate.

D] Motorcycle and one iron Sword have been seized from the applicant by taking recourse of memorandum panchanama. Hence, the application is prayed to be rejected.

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

6] Main arguments of the Ld. Advocate for the applicant is that the applicant is innocent and he has been falsely implicated. As against this, the Ld. Spl. PP submitted that role of the applicant is specifically mentioned in the F.I.R. He also submitted that the eye-witnesses have also disclosed the presence of the applicant at the time of incident.

7] As per allegations in F.I.R., the applicant had appeared to the construction site. It is alleged that prior to two days of the incident, the applicant had also came on the said construction site along with his brother the accused no. 1 Suraj. The informant further alleged that at the time of incident the applicant was holding Sword. Though, Ld. Advocate for the applicant submitted that there is no allegation of use of the Sword by him, his presence along with deadly weapon Sword is specifically alleged in the F.I.R. The eye-witnesses have also supported the allegations in the F.I.R. The said alleged weapon has also been seized from the applicant on recording his memorandum under Section 27 of the Indian Evidence Act.

Therefore, it cannot be said that the applicant ought to have been no role in the said alleged incident.

8] One more aspect is considerable about filing of more than one charge-sheet prior to the sanction under the MCOCA. Ld. Advocate for the applicant has relied upon the judgments in following cases :

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

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

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

[d] Girish Kumaran Nayar Vs. The State of Maharashtra, Bail Application no.2241 of 2018

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. Moreover, there has to be continuing unlawful activity.

9] The prosecution has mentioned in the charge-sheet that following four offences are pending against the applicant.

Sr. No.	Police Station	C. R. No.	Offences under Sections	Date of Arrest	Court Case number	Current Status
1]	Phaltan Gramin	221/2015	143, 147, 149, 452, 324, 323, 504, 506 of IPC	02.11.2015	R.C.C. No.36 of 2016	Acquitted

2]	Phaltan Gramin	223/2015	143, 146, 149, 323, 504, 506 of IPC	Absconded	R.C.C. No.139 of 2016	Compromise
3]	Vadgaon (Ni.)	520/2020	143, 147, 148, 149, 307, 326, 324, 323, 504, 506 of IPC and Section 4/25 of Arms Act	16.11.2020	R.C.C. No.360 of 2021	Pending
4]	Phaltan Gramin	540/2021	307, 327, 143, 147m 148m 149, 212 of IPC and Section 4/25 of Arms Act	Anticipatory 25.03.2022	R.C.C. No.84 of 2023	Pending

10] One is the present offence bearing C.R.No. 841 of 2022 wherein charge-sheet has been filed and cognizance has been taken by the competent Court.

11] 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. 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 case bearing R.C.C.No. 36/2016 raised on C.R.No. 231/2015 resulted into acquittal of the applicant. Without taking cognizance there could not be trial and conclusion in R.C.C.No. 36/2016, which was committed to the Sessions Court, Satara on 27.01.2016 and concluded on 31.12.2016 within the period of ten years. R.C.C.No. 139/2016 was also resulted in to acquittal of the applicant by judgment dtd. 06.05.2021, but it was after compromise in between the applicant, other accused and

the informant. However, it is clear from the above proceedings that there were in all four prosecutions against the applicant during the period of ten years preceding to the sanction accorded in the present case on dtd.13.02.2023. Hence, on these grounds and settled position of law, case of the applicant cannot be considered for bail.

12] Considering allegations in the F.I.R., there appears presence of the applicant on the spot and his involvement in demanding ransom to the informant. There seems direct evidence of the eye-witnesses also which would establish that the applicant has active role in commission of the present offence.

13] Therefore, considering the facts and material on record, there are reasonable grounds to presume that the applicant is not guilty of the offence as alleged. In the other words it would be said that the prosecution satisfied the first condition under Section 21(4) (b) of the MCOC Act. Regarding another condition that the Court to satisfy that the applicant is not likely to commit any offence while on bail. His Ld. Advocate submitted that it would be early presumption that the applicant will commit offence if he has been released on bail. However, as submitted by Ld. Spl. PP, considering his previous prosecution in the above mentioned cases no risk can be taken of unforeseen event. Therefore, even on stringent conditions, as submitted by his Ld.Advocate, I am not inclined to grant bail to the applicant. Considering his role in commission of the offence, he is not entitled for bail on the ground of parity. Hence, I pass the following order.

ORDER

1. Application Exh. 88 is rejected.
2. The order be communicated to the applicant **Dnyaneshwar @ Nanya Vasant Bodare** through the concerned Jail Authority by e-mail along with information regarding District Legal Services Authority, Satara and Taluka Legal Services Authority, Phaltan, wherefrom she may seek further help, if she wants to appear before the Hon'ble High Court for bail.

Place : Phaltan
Date : 11.03.2025

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

Dictated On	11.03.2025
Transcribed On	11.03.2025
Checked On	11.03.2025
Signed On	11.03.2025