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*MCOCA Special Case No. 08/2024.
Shaikh Rahim @ Sher Ali V/s. State.
(CNR No. MHYA010001012024)*

**-: FINAL ORDER BELOW EXH.26 IN SPECIAL CASE
BEARING NO.08/2024. :-**

(Delivered on this 05th Day of September 2024)

1. Applicant/accused invoked jurisdiction of this Court vide Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with C.R. No.503/2023 registered with Police Station Yavatmal City, Distt. Yavatmal, for the offence punishable U/secs. 302, 364, 143, 144, 147, 148, 149, 201 and 120(b) of the Indian Penal Code, r/w sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2. Afterwards filing of the final report vide section 173 of the Code of Criminal Procedure, the accused herein moved this Court with instant first bail application. When the case is stand over for further due deliberation the applicant accused herein knocked the door of this Court and implored for his release on suitable bail.

Succinct facts are as follows :-

3. The informant hails from Yavatmal. Deceased Roshan Maske was son of the informant. Few days back co-accused Shinu Shinde and other 8 to 10 unknown persons had been to Roshan and they had threatened him of dire consequences, if he would indulge into the gang headed by Akshay Rathod. As such, they have caused threatening to him. In the backdrop, on 23.06.2023, at about 12.30 Noon the informant received a phone call from his wife thereby informing that their son Roshan has been brutally killed. Post intimation, the informant immediately rushed to the Government hospital Yavatmal and to his utter shock he found Roshan succumbed to the injuries. Then the informant made inquiries with the friends of the deceased wherein it was revealed that on 21.06.2023, co-

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accused CCL had brawled with the deceased at Pimpalgaon. The informant unveiled that in order to take revenge co-accused Rahul @Shinu Shinde as well as CCL including applicant accused hatched conspiracy and with their common object, they brutally killed the informant's son. It is urged that all accused being part of unlawful assembly with a common object to kill the informant's son, hatched conspiracy and murdered him with several injuries to his person. On the strength of said scenario, the informant mustered courage and lodged detailed report about the incident. On the *caudex* of said report, crime was registered and investigating machinery was set into motion. Amid investigation the role of applicant accused *come in fore* hence he was arrested, interrogated and taken into MCR on 02/09/2023 so on till date. Shortly the provisions of MCOC Act were invoked against all accused. In the backdrop, instant application for bail.

4. *Per* accused he is innocent. He is falsely implicated in the crime. His custodial interrogation is not required. Entire set of allegations in FIR are false and concocted. As such further physical custody of present accused is not required for any sort of custodial interrogation. Nothing is to be recovered or discovered at the instance of the applicant. As such there remains nothing to be interrogated with him. Investigation in instant crime is already over and Charge-sheet is filed before the court. He is ready to cooperate in the trial. He is also ready to attend trial regularly. It is further urged that co-accused are already released on the bail. The rule of parity is applicable. MCOC Act is not applicable to him. On all these counts he implored for conferring suitable bail and oblige.

5. *Negating above stance* the prosecution raised stiff objection for freeing of the accused with their reply below Exh.28. According to them, offences leveled against the accused are serious in nature. Alleged offence are serious and contemplate heavy penalty for the same. If he is released, then there are likely chances that he may tamper the evidence. He is part of the conspiracy and with their oblique motive they all have

assaulted the deceased. He has active involvement in the crime. Applicant/accused is a hardened criminal. Several offences are pending against him. If he is conferred with bail, he would pressurize the informant and witnesses. On the count of recurrence as well as gravity of crime, prosecution prayed for rejection of the application in *limine*.

6. Heard Id. *Advocate S.M.Ali* for the applicant/accused and Id. *APP Mr. A.S. Verma* for the prosecution at length.

7. Mused over say, copy of FIR, and other documents pertaining to investigation keenly.

8. Alluding towards the submissions by the parties relating to the grant of bail it is epochal to look into the prime considerations of the bail vide section 439 of the Code of Criminal Procedure. The Hon'ble Supreme Court has, in catena of judgments, outlined the considerations on the basis of which discretion under Section 439 of the Code of Criminal Procedure has to be exercised while granting bail. A useful reference on the point can very well be made from magnificent verdict of the Hon'ble Supreme Court in the case of ***Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118***. Certain important factors that are always considered while exercising discretion for conferring bail which *inter-alia* relates to prima-facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused. A gainful reference can also be made from the verdict of Hon'ble Supreme Court in the case of ***State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21***. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which mainly depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. In the light of said legal scenario present application seeking regular bail deserves due deliberation.

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9. Offence punishable vide 302, 364, 143, 144, 147, 148, 149, 201 and 120(b) of the Indian Penal Code, r/w sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act) are alleged against the accused. They are grievous in nature. The alleged offences contemplate punishment of death sentence or imprisonment for life.

10. At the outset, it is epochal to note here that in present crime charge sheet is placed before this Court and the case is stand over for appearance/production of the accused wherein, instant application is moved for enlargement of the accused on suitable bail. *Having scanned charge-sheet it is crystalline that investigation as regards present accused is concerned is already over. Thus, as of now nothing is left to be recovered or discovered at his instance.*

11. Apparently offence vide sections 3(1)(i), 3(2) and 3(4) of MCOCA Act are alleged against present accused.

12. The question of grant of regular bail to the applicant accused has to be determined on the facts and circumstances of the present case by exercise of judicial discretion in accordance with relevant statutory provisions and settled principles of law.

13. In view of section 21(5) of the Maharashtra Control of Organized Crime Act, 1999- Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question. It is not the contention of the Learned APP that applicant accused was on bail in any case registered under the provisions of MCOCA when this offence was committed. Thus, there is no bar of section 21(5) of the Maha. Control of Organized Crime Act, 1999, escalating for entertaining present application.

14. While conferring bail upon the accused, as per section 21(4) (b) of the Maharashtra Control of Organized Crime Act, 1999 the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If these two conditions are fulfilled then only bail can be granted for offence under MCOCA.

15. **Firstly**, it has to be seen whether the applicant accused is a part of 'organized crime syndicate' as defined under section 2(1)(f) of MCOCA. Upon perusal of the crime register extract, though it is seen that few offences are registered against the applicant accused prior to this offence, the Learned APP has not shown any similarity between any pending cases and the present offence. The Learned APP has not shown any *nexus* between any past crime and present case. The Learned APP has not shown any case by which it can be infer that the applicant was ever a member of organized crime syndicate or of any similar gang. **Secondly**, it has to be seen whether the offence committed falls under the definition of 'organized crime' as defined under section 2(1)(e) of MCOCA. In the present case, it is urged that out of rivalry all accused including applicant being part of unlawful assembly with a common object to kill the informant's son, hatched conspiracy and murdered him with several injuries to his person. Said offence can not be held to be pecuniary gain as contemplated under 'organized crime'. **Thirdly**, it has to be seen whether the accused has committed continuing unlawful activity as defined under section 2(1)(d) of MCOCA. The Learned APP has not shown any *nexus* between any past offence and the present offence. The prosecution has not shown similarity between the *modus operandi* of any offence and present offence. The accused is not convicted of any offence so far.

16. For the aforesaid reasoning, it is not visible *prima facie* that the applicant is a member of organized crime syndicate and he committed organized crime with the objective of gaining pecuniary benefit and he

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continued indulging in unlawful activities. Thus, *Prima facie* there are reasonable grounds for believing that the applicant accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

17. Ld. Advocate of the accused Mr. S.M.Ali with vim and vigor did submit and relied upon *Bail Application No.2241/2018 Shri Girish Kumaran Nayar Vs. State of Maharashtra Hon'ble High Court, Bombay* wherein it was held that *criminal antecedent of the applicant were placed on record. However, which chargesheet were considered for his prosecution under MCOCA was not clear. Nexus between past criminal activities and present crime is also not established. Nothing to show that past offences were committed by applicant as member of or on behalf of organized crime syndicate. Mere proof of past chargesheet is not enough. Investigation is already over. The applicant is in custody since last 4 years. Trial not likely to commence within reasonable time. Bail was granted.* In present case, the prosecution has not shown any offence committed by the applicant as member of or on behalf organized crime syndicate. Accused is behind bars since last 01 Year. *Muddemal* is not deposited by the prosecution yet. Charge is not yet framed. The trial is likely to take long to commence. As the fact of two cases are similar the above ratio is applicable.

18. Up-shot of factual scenario manifested above it is crystalline that *prima facie* the attribution of provisions of MCOCA against applicant accused are having little shades of doubt but only the provisions of IPC and other Acts are attracted. ***This being prima facie analysis only for the just decision of the bail application and whether such provisions of MCOCA would be tenable and proved or not is subject matter of the trial and it is not the stage for considering merits and demerits of the same.***

19. Rule of parity is also next point for deliberation. It seems that few co-accused are already released on bail. They are having more or less likewise role in the crime. Though provisions of MCOCA were invoked

against them, they are conferred with the bail. In the same manner, even if the applicant is ascribed with similar role, he deserves bail in the same manner.

20. Now, averting towards remaining set and bunch of allegations, ***Having mused over FIR it reveals that the name of the applicant is not specifically mentioned in the FIR as an assailant.*** It is loud clear from investigation papers that except being member of conspiracy no as such otherwise specific role is attributed towards accused/applicant. ***Virtually the informant is not an eyewitness of the incident.*** The informant is not having first hand information as regards to the incident. He has not witnessed the alleged incident. With regards to other witnesses are concerned, none has stated that they have seen the accused applicant at the time of alleged incident. No doubt, the injury which has led to the death of the deceased is certainly caused by the severe assault. The medical papers including post-mortem report are throwing light upon it. In the backdrop, it is not the case of the prosecution that it was applicant accused who assaulted and killed the deceased. Prime allegation of actual causing death of the deceased are against co-accused CCL only. Admittedly there is no material suggesting that applicant accused was present at the time of scene of occurrence. There is no direct evidence suggestive that the applicant accused has allegedly assaulted the deceased. The entire case against him rest upon circumstantial evidence which deserves weightage at the time of trial. The role attributed towards accused/applicant is that he was part of the conspiracy. The linkage of alleged phone calls made *inter-se* co-accused and the applicant is shown as incriminating evidence by the prosecution. It is the only incriminating evidence against present accused. Mere SDR/CDR are less petite evidence to attribute felony of murder as well as hatching criminal conspiracy against the applicant accused. The truthfulness and efficacy of said evidence would be matter of merit. In addition, it is also not the

case of the prosecution that applicant is master mind behind the conspiracy and entire crime plot. As regards conspiracy is concerned it is a matter of merit. All these aspects goes to the root of the matter. ***It would not be worthy to go into the merit and demerits of the conspiracy viz-a-viz case at this stage.***

21. *Prima facie* the role attributed towards applicant is petite and not *at par* with the co-accused CCL and Shinu Shinde. It seems that the weapon allegedly used in the crime are recovered at the instance of the co-accused. So far the applicability of common object by unlawful assembly vide section 149 of the Indian Penal Code and involvement of present accused in the crime is concerned, it is subject matter of the trial. At this stage, it is not desirable to consider the merits and demerits of the case. In present crime nothing is seized from the applicant accused, ***there is no recovery at the instance of the applicant, so also there is no memorandum under section 27 of the Evidence Act from the applicant.*** As such, there is no specific reason put forth by the prosecution to disown bail relief to the accused. Was there any conspiracy to kill the deceased and what is the efficacy of all circumstances is matter of trial. Thus, ***merely on the aforesaid aspects it is not desirable to junk instant bail application outrightly.*** As regards abetment and conspiracy is concerned it is a matter of merit. Though the offence is grave and serious and nature of evidence against instant accused appears to be circumstantial cum indirect, it would be just and proper to admit the applicant to bail, as a normal rule of criminal jurisprudence is bail and not the jail. What is principally required to be seen is as to whether the applicant's presence can be procured during the trial of the case or not. The applicant is permanent resident of *Distt. Yavatmal*. He is having his roots therein. ***There are no likely chances that he would flee from the justice.*** Having pore over entire material placed on record, considering the period the accused is behind the bar, and as such his further custodial interrogation seems not required, I am of the opinion that the accused applicant would be admitted to the bail.

22. In addition, now as such nothing is remained to investigate anymore and ***the accused /applicant is incarcerated for more than last 10 months.*** The alleged weapon is already recovered. As of now nothing is left to be recovered or discovered at the instance of this accused. Presence of accused behind bar for any sort of custodial interrogation does not require for. The accused is ready to attend court regularly. As such, anxiety expressed by the prosecution as regards gravity of crime is concerned, it can be taken care of by putting stringent condition upon him. The elements of further investigation are not shown by the prosecution. More-so, ***it is not aptly shown by the prosecution that present accused by virtue of his status may tamper with evidence.*** In addition, as of now other co-accused are already released on the bail. There is no complaint against them. Thus, there are no potent objection to disown the applicant accused with reliefs of bail.

23. Utmost recently, the Hon'ble Supreme court observed in the case of ***Mohd Muslim @ Hussain V/S State (NCT Of Delhi) Criminal Appeal No. (S) Of 2023 (@ Special Leave Petition (CRL.) No.S). 915 Of 2023) dated March 28, 2023,*** that

“ 23. *There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects – where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”*

Precisely, the Hon'ble Supreme Court unfolded the evil impact of the long incarceration and enlarged the concern accused on

bail by pressing upon the constitutional right of personal liberty and speedy trial of the accused persons. The Hon'ble court reasserted the observations made by the Court in the celebrated verdict of ***Abdul Rehman Antulay V/s R.S.Nayak ((1992) 1 SCC 225)***

24. Indeed, it is well settled legal proposition, while dealing with regular bail application, is that the object of the bail is to secure appearance of the accused at the time of his trial by reasonable amount of bail. Its object is neither punitive nor preventive. Application of similar object and scanning instant application under same object is holding significance. A useful reference on the point can be made from the law guided by the Hon'ble Supreme Court in the Case of ***Sanjay Chandra V/s CBI reported in (2012 AIR(SC)830)***. In present case there are no special reasons put-forth before this court that may lead to raise exception to aforesaid object. In ***P. Chidambaram V/s Directorate Of Enforcement reported in (2020(13)SCC 791)*** the Hon'ble supreme Court repeatedly highlighted the proposition that Bail the rule and jail the exception. A gainful reference on the point can also be made from the recent landmark verdict delivered by the Hon'ble Supreme Court in the case ***Satender Kumar Antil V/s CBI ((2022) 10 SCC 51)***

25. While enlightening on the aspect of bail in other acts the Hon'ble Court expounded in loud manner in the case of ***Uttamsingh V/s. State of Himachal Pradesh (2021 All MR (Cri) Journal 75)*** that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. In instant matter there is no such anxiety that the accused may flee from justice and remain absent for the trial. Certainly, the legal position tilts in favour of the applicant accused.

26. As of now, the Final report is filed in the instant crime. The case is stand over for further due deliberation cum trial. It will take time to commence and conclude the trial. Presence of accused behind bar for any sort of custodial interrogation does not require for. The accused is ready to attend court regularly. Resultantly, in the light of aforesaid scenario specially in view of legal verdicts elucidated above, I believe, the applicant accused deserves bail. All these factors too enlarges the scope to release the applicant on bail under Section 439 of the Code of Criminal Procedure as well.

27. Precisely alleged offences are grave and serious but, it would be just and proper to admit the applicant to bail, as a normal rule of criminal jurisprudence is *bail and not the jail*. There are no vital attributions against him, thus he deserves approval for bail.

28. Apogee of all above facts, foregoing peculiarities and factual scenario, speaks in clarion manner that the application needs to be allowed, however, by putting certain restrictions. In instant case when the investigation as regards instant accused is concern is over by all means, so also when he is committed to attend the I.O. & Court and follow terms and conditions, imposed if any, I believe there is no hurdle for bail. Ultimately, owing to preceding distinctive features, the application deserves approval, however, by putting certain conditions.

29. Conspectus of the circumstances leads to pass the following order for omega.

ORDER

1. Application is allowed.

2. The accused applicant– Shaikh Rahim @ Sher Ali Moti Sayyed, in connection with Crime No.503/2023 registered with Yavatmal City Police Station, District Yavatmal, for the offence punishable U/secs. U/secs. 302, 364, 143, 144, 147, 148, 149, 201 and 120(b) of the Indian Penal Code, r/w sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act), be released on **P.B. of Rs. 1,00,000/- with One solvent surety in the like amount**, on the following terms and conditions;

Conditions

- (i) The 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.
- (ii) He shall attend each and every date before this court, failing which his bail shall be treated as cancelled without any further reference to this court.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) He shall not foster any interaction with the Informant or with any of his relatives cum prosecution witnesses.
- (v) He shall furnish his cell number and intended address of his residence to the concerned investigating officer and the court.
- (vi) His surety shall produce verified copy of his / her Aadhaar Card, Contact Details, Copy of Bank Passbook and other Address Proofs.
- (vii) He shall not enter into the territorial jurisdiction of entire Yavatmal District, (except for attending Court proceedings), for a period of one year from the date of his actual release.

Date : 05/09/2024.

(Amit Anant Laulkar)
Judge, Special Court,
Yavatmal.