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MCOCA Special Case No. 147/2023.
Amit Yadav V/s. State.
(CNR No. MHYA010025332023)

-: FINAL ORDER BELOW EXH.34 IN SPECIAL CASE
BEARING NO.147/2023. :-
(Delivered on this 17th Day of April 2025)

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.682/2023 registered with Police Station Awdhootwadi, Distt. Yavatmal, for the offence punishable U/secs. 302, 201, 396, 364 of the Indian Penal Code, Section 3(2)(v) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities (Act) 1989 r/w sections 3(1) (i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA Act).

2. Post 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.

Bonsai facts are as follows :-

3. Gajanan Mahadeo Tole hails from Yavatmal. Deceased Vijay Tole was his brother. Few days back deceased was missing therefore, on 11.05.2023, Gajanan Tole lodged missing report. Inquiry was ensued. Amid search, it was found that bicycle of deceased Vijay was parked near J.K. Wine Bar. Shortly, CCTV footage of the said Bar was analyzed. It was observed that co-accused Gaurav Umate and applicant accused were seen along-with deceased Vijay. That way the police got the lead and they interrogated with aforesaid persons wherein it was revealed that both above referred co-accused kidnapped deceased Vijay and he was taken within the vicinity of Lohara and at that time they as well applicant, Dipak Puram and

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two unknown friends of Dipak brutally beaten to Vijay causing his death. In this way, they murdered Vijay Tole and thereafter removed cash as well as other golden ornaments from his person. Shortly, in order to disappear the evidence they threw the body of Vijay in nereby Safety tank. It is urged that in view of information given by Gaurav Umate and applicant, the informant, NPC Raju Gujar lodged report at Awadhutwadi police-station and thus 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 13/05/2023 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 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.62. 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. If he is conferred with bail, he

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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. Post receipt of the notice, the original informant caused appearance before this court and raised objection for freeing of the accused on bail, through his reply below Exh.61. He expressed anxiety of repentance of similar crime at the instance of the accused. Ultimately, He claimed for rejection of the bail application *in entirety*.

7. Heard Id. *Advocate M. A. Sable* for the applicant/accused and Id. *APP A.S.Verma* for the prosecution at length.

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

9. Alluding towards submissions made across the bar 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 which is *at par* with Sec. 483 of BNSS. 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

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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.

10. In *Kalyan Sarkar V/s Rajesh Ranjan (AIR 2004 SC 1866)* it was held that: “ *The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.*” Thus while deciding the question whether bail is to be granted or not detailed examination of the merits of the case is not to be considered. It is not at all desirable that the court should appreciate the evidence at the pre-trial stage.

11. In the light of preceding legal scenario present application seeking regular bail deserves due deliberation.

12. Offence punishable U/secs. 302, 201, 396, 364 of the Indian Penal Code, Section 3(2)(v) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities (Act) 1989 r/w sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) are alleged against the accused. They are grievous in nature. The alleged offences contemplate punishment of death penalty or imprisonment for life.

13. At the outset, it is epochal to note here that in instant crime charge sheet in 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-*

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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.

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

15. 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.

16. 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.

17. 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.

18. **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, it is visible that

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likewise offences were registered against the applicant accused prior to this offence. Though in many cases applicant is acquitted after trial but it can not be overlooked that many offences were registered against him in the same manner. The Learned APP could not show *nexus* between any past crime and present case but it can not be inferred that the applicant was never a member of organized crime syndicate or of any similar gang. Naturally, *prima facie* it can be inferred that applicant is a member of organized crime.

19. *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 to cause dacoity all accused including applicant being together murdered deceased with several injuries to his person. Said offence can come under the sweep of pecuniary gain as contemplated under ‘organized crime’ mostly considering the incriminating material revealing against the applicant. There is ample material revealing that he was present there as part of organized crime looking for pecuniary benefits. Ultimately, it can be inferred that he is broadly involved into organized crime as in substance. *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 any similarity between the *modus operandi* of any offence and present offence. The accused is not convicted of any offence so far.

20. For the aforesaid reasoning, it is *prima facie* visible that the applicant is a member of organized crime syndicate and he committed organized crime with the objective of gaining pecuniary benefit and he continued indulging in unlawful activities. Thus, *Prima facie* there are reasonable grounds for believing that the applicant accused is guilty of such offence and that he is likely to commit any offence while on bail.

21. Up-shot of factual scenario manifested above it is crystalline that *prima facie* the attribution of provisions of MCOCA against applicant accused are loudly visible. ***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.***

22. Now, averting towards remaining set and bunch of allegations, Offence punishable under section 302 of the Indian Penal Code is alleged against the accused applicant. It contemplates death penalty. Indeed, it is serious offence in nature. Now, the charge-sheet is placed before the Court and the case is stand over for further trial, wherein present applicant has prayed for his release on suitable bail. The weapon is already recovered. It seems from investigation papers that the alleged weapon is recovered at the instance of accused applicant under ordeal of seizure panchanama vide section 27 of the Indian Evidence Act. ***It is the memorandum statement of the applicant which led for the recovery of the weapon and discovery of other factual scenario.*** Even cloths of the deceased were recovered at the instance of the applicant. The method of causing death was hitting by means of stick over vital organs. In that context, a stick is recovered at the instance of the applicant. Most importantly, Not only this record reveals that there is CCTV footage collected by the police thereby revealing the whole incident and it is seized during investigation. This CCTV footage would add to the statement given by eye witnesses. It can be seen that applicant and co-accused were seen with the deceased before the incident near one Bar. No doubt, the injury which has led to the death of the deceased is certainly caused by the severe assault. The medical papers including postmortem report are throwing light upon it. In the backdrop, it is apparently shown by the prosecution that it was applicant accused who assaulted and killed the deceased. There is ample material suggesting that applicant accused was present at the time of scene of occurrence. At the moment, there is nothing to take doubt on such incriminating substance. There is memorandum

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statement vide section 27 of the Indian Evidence Act, of the applicant and it is shown as epochal evidence against him. The role attributed towards him is important. ***The chain of circumstances is primarily visible from record and thus at the moment, it is no desirable to enlarge the accused on bail.*** No doubt, it is not the stage to consider merits or demerits of the case and whether such chain of circumstances are proved or not. It would be decided conclusively at the end of the trial. ***Prima-facie involvement of present accused in alleged crime is visible.***

23. *Apogee* of all above circumstances I believe at present there is no specific reason to enlarge accused upon bail. Although charge sheet is filed there are change in circumstances, but that does not mean, it is the only criteria to decide application seeking regular bail. The alleged offence is serious and contemplates death penalty for the same. The chain of evidence is unfolded before the Court. More so, at present there is likelihood that if applicant/accused is released on bail there would be chances of impediment in the trial. If applicant is set free, there are likely chances that the life and limb of the single eye witness would come into trouble. In the eventualities the accused do not deserve bail at the moment. Hence, the order.

ORDER

Application stands rejected.

Date : 17/04/2025.

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