

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2651 OF 2019

Vasudev Chandu Nayk @ Vasudev @ Vasoo]
Dhanush Chavan,]
R/at, Kanyakolurtanda, Taluka Shahapur,]
Dist. Yadgir, Karnataka.]
(At present, lodged in Kalaburagi Central]
Prison).] ... Applicant

Versus

The State of Maharashtra]
(Through Kongaon Police Station.)] ... Respondent

...

Mr. Swapnil Ambure with Mr. Sukrat Mhatre for the Applicant.

Mr. Y.Y. Dabake, A.P.P. for the State.

...

CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 16TH MARCH, 2021.

PRONOUNCED ON : 22ND MARCH, 2021.

ORDER:-

1. The Applicant is seeking his release on bail in connection with C.R. No.07 of 2017 registered with Kongao Police Station for offences punishable under Sections 395, 365, 201, 120-B and 412 of the Indian Penal Code (“IPC”) and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (“MCOC Act”).

2. The Applicant is arrested on 06/03/2019 and has been alleged to be a member of the Crime Syndicate and when he applied for bail to the Sessions Judge, his Application was rejected on the very said premise.

3. Mr. Ambure, learned counsel appearing for the Applicant states that the co-accused Laxman Chavan, Sanjay Kumar @ Munna Balu and Paru @ Bhuta Rathod, who have been attributed a similar role as that of the Applicant are released on bail by this court on 26/10/2018 and he claims parity. Learned counsel also relied upon the order dated 02/02/2021 passed by this court, whereby the other co-accused being Sharanappa @ Sharanu Prabhu Sahurkar, Santosh Laxman Chouhan, Valu @ Valya Limbu Chavan, Biresh @ Badhya Mallapa Rathod and Laxman @ Lucky Chauhan are also released on bail.

4. Though the Application filed by the present Applicant was listed along with the said connected matters, on account of the roster assigned to the Hon'ble Judge, who passed the common order on 02/02/2021, the present Application was segregated as it pertains to the co-ordinate bench and it is detagged from the group of matters.

The Applicant states that he is similarly situated as the other co-accused, who have been released on bail.

5. Learned A.P.P. was directed to prepare a chart qua all the accused persons so as to indicate the role of each accused in the alleged conspiracy and also whether they are indicted by any statement under Section 18 and identified in the Test Identification Parade and whether there is any recovery. Accordingly, learned A.P.P. has placed on record, a detailed chart indicating whether a particular accused has been released on bail and also reflecting on the points mentioned above. As far as the present Applicant Vasudev, who is Accused No.14 is concerned, the role attributed to him, the evidence compiled in the charge-sheet in support and claim of the prosecution that he is a member of the Crime Syndicate, the following factors have been relied upon.

- (i) The present Applicant along with co-accused gathered at Hotel Bhushan lodging and boarding,

Panvel, District Raigad and they hatched a conspiracy.

- (ii) After the proclamation was issued, the Applicant had committed offence i.e. C.R. No.487 of 2018 registered with Narpoli Police Station, Thane and robbed the mobile phones worth Rs.54,27,891/- and was absconded.
- (iii) After absconding, the present Applicant/accused committed another offence at Shahapur Yadgiri Police Station, Karnataka, vide C.R. No.29 of 2019 under Section 41(1)(d) of the Cr.P.C. read with Section 379 of the IPC.
- (iv) 30 Lenovo Tab, 7 Nokia Mobile Phone and Samsung (J-7) Phone, worth Rs.2,53,493/- were found with the present Applicant in C.R. No.487 of 2018 registered with Narpoli Police Station, Thane and he was arrested in the said offence on 03/02/2019.

6. In the column – whether any statement under Section 18 implicates him, the answer is in the negative and, so is the case of his identification in the Test Identification Parade and as regards

any recovery from him, the said parameter is also answered in the negative.

7. Comparing his case with other accused persons, Laxman Chavan (A-4), Valu @ Valya Limbu Chavan, Santosh Limbu Chavan, Biresh @ Badhya Mallappa Rathod and Laxman Subhash Chavan, learned counsel for the Applicant submits that the allegation levelled against the co-accused is the identical being, the co-accused gathered at Hotel Bhushan Lodging and Boarding the conspiracy was hatched there. But, no identification in Test Identification Parade and no recovery from them, prompted the court to release them on bail. Learned counsel claims parity with the said co-accused.

8. Learned counsel has invited my attention to the Register maintained by Hotel Bhushan Lodging and Boarding, where names of all the said co-accused Laxman Chavan (A-4), Valu @ Valya Limbu Chavan, Santosh Limbu Chavan, Biresh @ Badhya Mallappa Rathod and Laxman Subhash Chavan are written along with Vasudev i.e. the present Applicant and the charge is that all the accused persons conspired together by remaining present in the said hotel. Learned A.P.P., however, did not point out any material about the said conspiracy being hatched and given effect to and, rightly so, since the conspiracy is always hatched in the darkness of the night and has to be proved by positive evidence bringing it to

light which will be unearthed at the time of trial.

9. The only material which goes against the Applicant is that he had absconded and proclamation was required to be issued and then he was arrested in C.R. No.487 of 2018. The conduct of the Applicant is, therefore, stressed as a factor denying him bail, by the learned A.P.P. Pertinent to note that Laxman Subhash Chavan as well as one Sanjaykumar @ Munna Babu Bula and other accused person Kiran Srinivas Chavan, who have been released on bail, also have a criminal track record and they are alleged to be habitual offenders involved in similar type of offences and, in fact, Laxman Subhash Chavan is also alleged to have invoked an offence under Section 307 of the IPC. This very factor, in my considered opinion, would not keep away the Applicant from his liberty when there is no positive material, which would keep him detained when all the co-accused persons have been released on bail.

10. In the order dated 26/10/2018 passed by Justice Prakash D. Naik in Criminal Application No.571 of 2018 and Criminal Application No.945 of 2018, it is recorded that Applicant Laxman Subhash Chavan was not identified by any eye-witnesses nor there was any recovery from him and, therefore, there was no evidence to establish that he was a member of the organized crime syndicate. In absence of the identification, the court held that he cannot be further subjected to detention and was released on bail. As far as

the Applicant – Sanjaykumar @ Munna @ Babu Bula is concerned, the confessional statement of the co-accused without any corroboration was not found sufficient, coupled with his non-identification in the Test Identification Parade and no recovery from him and, therefore, he was released on bail.

11. Noting that the Applicants were in custody from the date of their arrest and, in absence of any evidence to show that the Applicants are involved in the crime and in the absence of any recovery or identification, the criminal antecedents did not deter the court from releasing the accused on bail, by recording that the rigours of Section 21(4) of the MCOC Act would not attract and in the light of the judgment of the Apex Court in *Ranjit Singh Sharma v. State of Maharashtra*¹, they were held entitled for bail.

12. Relying upon the said order, the other co-accused were released on bail by order dated 02/02/2021. The Applicant stands on the same footing as of the said accused persons except the issue of proclamation issued against him. The said conduct of the Applicant, in my considered opinion, loses its significance in view of the fact that subsequent to the proclamation, he came to be arrested in connection with C.R. No.487 of 2018 and since then, he is behind bar. The offence registered with Shahapur Police Yadgiri Station, Karnataka in C.R. No.29 of 2019 is concerned, the Applicant has produced the charge-sheet and it reveals that it is an

¹ 2005 All M.R. (Cri.) 1538 SC

offence registered against family members of the Applicant and himself, for being in possession of some property reasonably suspected to be stolen property and there is no recovery from the Applicant and which places him on the same footing as the co-accused, who has been released on bail in the absence of any recovery.

13. Pertinent to note that the FIR in question in which the Applicant is arraigned as an accused was filed by the Assistant General Manager in Proconnect Supply Solutions alleging that on 10/12/2017, a theft has taken place in the godown of the company located in Pimplas Gaon, Taluka Bhiwandi and electronic goods of various companies worth Rs.42,19,490/-, which were stored in the said godown, were removed by breaking open the lock of the said godown and the FIR came to be registered against unknown persons. The Applicant is sought to be implicated as an accused and is charge-sheeted for the said offence and the provisions of MCOCA being invoked on 05/04/2017 by adding Section 3(1)(ii), 3(2) and 3(4) of the MCOCA.

14. The charge-sheet came to be filed on obtaining sanction under Section 23(2) of the MCOCA and the case is now pending for trial as MCOC Special Case No.16 of 2017.

15. Taking an overall view of the matter and by referring to the charge-sheet which cites 88 witnesses and the fact that there is no

likelihood that the trial would commence in near future and would be concluded with promptitude in the light of the material compiled in the charge-sheet against the present Applicant, the Applicant cannot be left languishing in jail awaiting his trial any more. He is, therefore, entitled to be released on bail subject to the following conditions.

:ORDER:

- (a) The Applicant – Vasudev Chandu Nayk @ Vasudev @ Vasoo Dhanush Chavan shall be released on bail in C.R. No.07 of 2017 registered with Kongao Police Station on executing P.R. bond in the sum of Rs.25,000/- and furnishing at least one local surety in the like amount.
- (b) The Applicant is entitled to be released on cash bail for a period of 21 days within which he shall arrange the local surety, failure to do so, the order shall stand automatically revoked
- (c) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

- (d) The Applicant shall give his permanent residential address to the Investigating Officer along with his contact number and keep the Investigating Officer informed about any change in the address or his contact number.
- (e) The Applicant shall co-operate with the conduct of the trial and attend the trial court on all the dates, unless exempted.

16. The Application is allowed in the aforesaid terms.

17. The observations made above are *prima facie* in nature limited only for the purpose of grant of bail and the Special Court should not be influenced by any of the aforesaid observations.

(BHARATI DANGRE, J.)