

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3129 OF 2019**

Abhijit Niwas Sankpal .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Niranjan Mundargi, with Mr. Omneel A. Jadhav for the Applicant.

Mr. S.R. Agarkar, A.P.P. for the State.

Mr. Vijay B. Maskar, PSI attached to Hupari Police Station, Kolhapur is present in the court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 21ST JUNE, 2021.

P.C:-

1. The Applicant, original accused No.3 has been arrested in connection with C.R. No.10 of 2018 registered with Hupari Police Station on 18/01/2018 invoking Sections 341, 395, 363 of the Indian Penal Code. Subsequently, the provisions of Maharashtra Control of Organized Crime Act (“**MCOCA**”), in

particular, Sections 3(1)(ii), 3(2), 3(4) and 3(5) thereof, were added. Charge-sheet was filed against 10 accused persons, out of which accused Sunny Mohite is absconding. The Applicant came to be arrested in connection with the said crime on 04/02/2018 and the charge-sheet came to be instituted in the MCOCA Special Court at Pune in the month of August, 2018. The bail application of the Applicant being rejected by the Special Court, he has approached this court.

2. Mr. Mundargi, learned counsel for the Applicant would submit that the charge-sheet does not reflect any material involving him as a member of the gang, who is alleged to be a member of an organized crime syndicate which committed the offence. C.R. No.10 of 2018 was registered at the instance of an informant, who alleged that on 16/01/2018, when he was driving a truck loaded with 22 tons of iron rods of Arya Steel Company Limited to be delivered to one Punamaram Chaudhary of Rabkavi village in Karanataka State and while the truck was en-route from Arya Steel Company, at Kagal in Kolhapur at 1.30 a.m., some unknown persons on motorcycles intercepted the truck and the complainant and the driver were asked to get down from the truck and they were assaulted. It is alleged that their mobile phones and an amount of Rs.1,000/- were snatched and they were made to sit in a white coloured car after being blindfolded, which went round and round and at about 5.30 a.m., the driver and the complainant were dropped off at Tavandi Ghat

on Highway No.4 and they left in the car. The Complainant alleged that they were robbed of the iron rods, cash and mobile phones worth Rs.10,15,993/-. This is the offence in which subsequently the provisions of MCOCA were added.

3. Learned A.P.P. relies on certain statements in the charge-sheet indicating that the charge-sheet reflects that the iron rods in the truck, which was intercepted in the night of 16/01/2018 from the truck of the complainant were subsequently found to be loaded in a truck bearing No. MH 09 BA 7400, which is registered in the name of the Applicant and that is how he is connected to the crime in question.

4. Mr. Mundargi has invited my attention to the statements of one Changdev Sonawane as well as the arrest memorandum panchnama of accused No.2, which led to the truck where the stolen iron rods were found. Sonawane is the watchman working in the premises of Ghodke Patil Transport. He referred to the incident of 16/01/2018 by stating that one truck loaded with iron rods were brought at the transport plaza and it was unloaded. He referred to one white coloured car and 4-5 persons arriving at the said spot. It is his statement that it is the accused Sunny Mohite, who mastered the entire drill and brought an empty truck bearing No. MH 09 BA 7400 and a crane and all the material, which were unloaded from the first truck were loaded in the truck bearing No.MH 09 BA 7400 and, that is how, the

said truck was found loaded with iron rods in the premises of Ghodke Patil Transport. Further, statements of one Kiran Patil also lent credentials to the statements of Sonawane when he admits that his crane was engaged and taken to the premises of Ghodke Patil Transport on 17/01/2018 at the instance of the present Applicant i.e. Abhijit Sankpal and he lifted the material and loaded them in the truck bearing No.MH 09 BA 7400 for which he received an amount of Rs.3,000/- as rent for his crane.

5. The submission of Mr. Mundargi is to the effect that the Applicant is engaged in the transport business and when his services were hired for transportation of the material, he was unaware that it was to carry some material which were robbed from the Complainant and, therefore, he has no connection with the crime in question and, therefore, he has engaged the crane for the purpose of loading the iron rods in the truck for the purposes of its transportation.

6. As far as the alleged link with the crime syndicate is concerned, the charge-sheet refers to certain call data and when it is carefully perused, the version of the prosecution to the effect that accused No.7 Akshay Bhosale was in touch with the present Applicant as can be reflected at page No.263 of the paper-book, does not correspond to the statement at page No.242 of the paper-book since the mobile number of the Applicant is reflected as 77760 58198 whereas, the telephone number which are

reflected at page No.263 of the paper-book are between accused Akshay Bhosale with his mobile No.72494 25213 being the caller phone on the mobile phone No.9011633642, which belonged to Manish Sangaonkar (A-8) and not the present Applicant.

7. Learned A.P.P. would concede to the said position. He is unable to show any telephonic conversation between the Applicant and any other accused. As far as the involvement of the Applicant being a member of the organized crime syndicate is concerned, learned A.P.P. fairly states that there is no commonality of any of the offence committed by the Applicant along with the gang leader or other members of the organized crime syndicate and the offence committed along with the organized crime syndicate being C.R. No.175 of 2010 and 194 of 2012 with Shahupuri Police Station are independent offences and have no connection with the offences which are attributed to the gang leader i.e. the absconding accused. It is the statement of the Applicant that he has been acquitted in C.R. No.194 of 2012. In absence of any material indicating the Applicant as a member of the organized crime syndicate and on the basis of sketchy material contained in the charge-sheet, *prima facie*, the Applicant is entitled to be released on bail as he cannot be incarcerated indefinitely. He is entitled to be released on bail subject to the following stipulation.

ORDER

- (a) The Applicant – **Abhijit Niwas Sankpal** shall be released on bail in C.R. No.10 of 2018 registered with Hupari Police Station, Kolhapur on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.
- (b) 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.
- (c) The Applicant shall present himself before the Shahupuri Police Station, Dist. Kolhapur on first Monday of every month between 10.00 a.m. and 1.00 p.m. till framing of the charge. After framing of the charge, the Special Court is at liberty to modify the said condition by asking the Applicant to mark his presence in the Special Court as and when directed.

8. The Application is allowed in the aforestated terms.

9. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

(SMT. BHARATI DANGRE, J.)