

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1103 OF 2022

Uttam Mahajan Ghunawant
Age : 45 years, Occ : Business,
Resident of Keligawhan, Rejewadi,
Tal: Badnapur, Dist : Jalna,
Maharashtra
(Applicant is presently lodged
in Jalna Central Jail, Jalna and
was shifted to Harsool Central Jail,
Aurangabad for MCOCA trial before
Ld. Special Judge, (MCOCA) Aurangabad)
..APPLICANT

-VERSUS-

The State of Maharashtra
Through the Police Inspector,
Badnapur Police Station, Tal : Badnapur,
Dist. Jalna, Maharashtra
..RESPONDENT

WITH

BAIL APPLICATION NO. 584 OF 2022

Rajsing @ Kuldeepsing Shamsing Kalani
age : 28 years, Occ : Business,
R/o MHADA colony, T.V. Centre, Jalna
..APPLICANT

-VERSUS-

The State of Maharashtra
through Police Inspector,
Badnapur Police Station,
Tq. Badnapur, Dist. Jalna.
..RESPONDENT

WITH

BAIL APPLICATION NO.1286 OF 2022

Gautam S/o Madhukar Sonune
age : 32 years, Occ : Private service,
R/o Shelgaon, Ta. Badnapur,
Dist. Jalna.
..APPLICANT

-VERSUS-

The State of Maharashtra
through Police Inspector,
Badnapur Police Station,
Tq. Badnapur, Dist. Jalna

..RESPONDENT

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Mr.A.D. Ostwal a/w Mr.Syed A.R., advocate for
applicant in BA no.1103/2022
Mr.S.A. Gaikwad, advocate for applicant in B.A.
Nos.584/2022 and 1286/2022.
Mr.K.S. Patil, APP for the respondent/State.

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CORAM : S.G. MEHARE, J.

RESERVED ON : 29th NOVEMBER, 2022

PRONOUNCED ON: 21st DECEMBER, 2022

ORDER :-

1. The applicants have been arraigned as accused in crime No.248/2019 registered at Badnapur Police Station, Jalna, Dist. Jalna, for the offences punishable under section 302, 307, 120-B of the Indian Penal Code (for short, "the I.P.C."), under section 3/25 of the Indian Arms Act and under section 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, "MCOCA Act").

2. The alleged incident happened on 7th October, 2019. The deceased was a labour contractor. It has been alleged against the applicants that in the year 2017, they had threatened the deceased

not to take labour supply contract. The accused attempted to commit the murder of deceased. Hence crime No.135/2017, for the offences punishable under sections 307, 147, 148, 149 of the I.P.C. was registered. When the incident happened, the said case was pending. The deceased was continuously threatened. One person used to be with the deceased was also assaulted and threatened not to live with the deceased. The deceased was assaulted in Pan Shop. The assailants came with masks. The report was lodged on the next day of the incident.

3. Considering the antecedents to the discredit of the applicants, the Additional Director General of Police (L & O), Maharashtra State, Mumbai granted sanction to prosecute the applicants under the provisions of MCOCA Act.

4. This is a third Bail Application of Uttam Mahajan Ghunawant. His earlier bail applications were rejected after considering the material placed before the Court. Applicant – Uttam is claiming the bail on the ground that the presence of the applicant on the spot of the incident was suspicious. The applicant was granted bail in another crime registered at the instance of the deceased. The statement of witness Manju Raosaheb Ghayal is contradictory. The statement of co-accused Pratik Mlind Hivrle under section 164

of the Code of Criminal Procedure also appears not true. The confessional statements of Sumersing and Dadu are inadmissible. In a CCTV footage at Beer Bar, the applicant is not seen. There is no iota of evidence and legally admissible direct or indirect evidence to connect the applicant with the alleged offence. There was no charge-sheet against the applicant more than one. Hence, the provisions of MCOCA Act would not attract. There is inordinate delay in completing the trial and there is no possibility of commencement and completion of trial in near future. The applicant is languishing in jail since 08.10.2019 without material progress in the trial. Pending several cases cannot be a ground for refusal of bail. There was previous enmity, therefore, there is a great possibility of false implication. Mere sustaining fire arm injury does not prima facie show the complicity of the applicant in the alleged crime. The prosecution has no evidence that the applicant was involved in the Organized crime with the objective of gaining pecuniary benefit or gaining undue economic or other advantage for himself or for any other person. The applicant is not the member of the Organized Crime Syndicate. In the earlier case registered against the applicant, there was no evidence against the applicant to prove his involvement. Lastly, he claimed the parity.

5. Learned counsel for applicants Rajsing @ Kuldeepsing and Gautam Madhukar Sonune adopted the arguments advanced by learned counsel for applicant Uttam. However, in addition thereto, he has vehemently argued that applicant Rajsing was not in a business of supplying labours. He was arrested on 26.06.2020. Nothing is recovered from him. He has been involved on the statement of the co-accused, which is not admissible in evidence. There is no memoranda below the sanction as required under rule 3(6) of the MCOCA Act. To buttress his argument, he relied upon the judgment in the case of ***Mohamad Iqbal Farooq Sheikh and another Vs. State of Maharashtra*** reported in 2007 All MR (Cri) 631. The sanction order initiating prosecution against the applicant under MCOCA Act is defective. He has been arraigned as an accused only because he has been an accused in various cases. However, in two cases, he has been acquitted. Similarly situated co-accused Sunil Premdas Vanarase has been granted bail, hence parity may be extended to him.

6. Similar were the arguments for applicant Gautam Sonune. However, it has been further argued that he was in employment of the co-accused. Only a single crime has been registered against him. In a previous case, he was not an accused. He may be granted bail.

7. The State has strongly opposed the bail applications. Bail application of Uttam Mahajan Ghunawat has been opposed on the ground of no change in circumstance. Applicant Rajsing was heading the organization. There are eye witnesses stating against him. Rule 3(6) of the MCOCA Act have been complied with. Section 18 of the MCOCA Act has also been complied with. There were 13 crimes against Rajsing. Reading material collected by the prosecution together, the prosecution has ample evidence to prima facie show the organized crime and activities of the accused were for financial benefit. The deceased was eliminated for the financial benefits as he was taking the labour contracts. The offences are serious. There is a great possibility of absconding. Hence the applications may be dismissed.

8. The law is well settled that inordinate delay in trial on the part of the prosecution and no scope to complete the trial in near future may be a ground to claim bail. However, the gravity of the offence and safety of the public cannot be ignored while considering the bail in such serious crime. The law is also clear that organized crime means an object of which was to gain pecuniary benefit or gaining undue economy or other advantage for the accused himself or any

other person. Whether, the organized crime was committed with objective of gaining pecuniary benefit or gaining undue economic advance should be tested on the basis of the allegations levelled against the accused for the reason that there may not be direct evidence in every case that such crime has been committed for pecuniary gain or benefit.

9. In the present case, the specific allegations have been levelled against the applicants that the deceased was labour contractor and the accused assaulted the deceased prior to this incident for dispute over labour supply contract. Before the incident, the deceased was also threatened, however, they had settled their dispute. One of the witness Vijay Sudarde was also threatened as he used to be with the deceased. The allegations are very specific against the applicants that they assaulted the deceased for the dispute over the labour contract. The labour contracts are the source of income. The applicants were also interested more particularly applicant Uttam Thekedar, in similar business. Eliminating the competitor would certainly for monitory or pecuniary gain. His elimination was gainful for him to get more labour contracts and to make money. If this case is viewed from this angle, it can safely be said that the applicants were involved in the

organized crime for gaining pecuniary benefits or gaining undue economic or other advances. In view of the allegations, it would be difficult to accept the arguments of learned counsel for the applicants that the provisions of the MCOCA Act would not attract.

10. The continuous activities threatening the deceased not to take labour contract must have spread the industrial unrest. Indirectly, the labourers must have been frightened. Making the employees indirectly unemployed is a sort of insurgency. Insurgency is the one of ground to refuse bail under MCOCA Act. As far as non-compliance of rule 3(6) of the MCOCA Rules is concerned, that may be considered on merit. Admissibility of confessional statement is also subject to test before the Court on merit.

11. The complainant was knowing well all the accused. The charge-sheet reveals that all the applicants were repeatedly involved in the crimes. Considering the role attributed to the applicant-co-accused Sunil Premdas Vanarase, he was allegedly driving the Bolero vehicle and paid amount to two unknown persons. Considering those allegations, this Court granted him bail. The role attributed to the applicants is altogether distinct from the role attributed to applicant-co-accused Sunil Premdas Vanarase. That apart,

applicant – Uttam could not satisfy the Court that there were change in circumstances after rejection of his earlier bail application. The charges have been framed against the accused. Therefore, it cannot be said that the trial has not commenced. The learned Additional Sessions Judge-1 before whom the case is pending has specifically observed in the order dated 12.05.2022 that several accused had filed applications for discharge. Those were disposed of by the Court. This shows the conduct of the accused.

12. Considering the material and the past of the applicants, the Court is not inclined to grant bail. Hence all the applications stand dismissed.

(S.G. MEHARE, J.)

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