

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

BAIL APPLICATION NO.1648 OF 2022

WITH

CRIMINAL APPLICATION NO.3696 OF 2022 IN BA/1648/2022

SUNIL RAMESH JADHAV
VERSUS
THE STATE OF MAHARASHTRA

WITH

BAIL APPLICATION NO.1563 OF 2022

WITH

CRIMINAL APPLICATION NO.3697 OF 2022 IN BA/1563/2022

1. SAGAR MURLIDHAR CHAUGULE
2. AKSHAY SANJAY CHAUGULE
VERSUS
THE STATE OF MAHARASHTRA

WITH

BAIL APPLICATION NO.1625 OF 2022

WITH

CRIMINAL APPLICATION NO.3698 OF 2022 IN BA/1625/2022

KISHOR @ APPA GULAB PATIL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants in BA/1648/22, 1625/22 : Mr. Sawant
Amol Shivajirao.

Advocate for Applicants in BA/1563/22 : Mr. V. B. Madan h/f
Mr. S. N. Suryawanshi.

APP for Respondent-State : Mr. K. S. Patil.

Advocate for Complainant to assist APP : Mr. Raje V. P.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 09.12.2022

PRONOUNCED ON : 21.12.2022

ORDER :-

1. The applicants have been arraigned as accused for the offences punishable under Section 302, 120-B, 201, 143, 147, 148, 149, 504, 506 read with Section 34 of the IPC, Section 3/25, 4/25, 27 of the Indian Arms Act and Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2. The incident happened on 18.07.2020. It has been alleged that when the complainant Mayur and his friends were at the hotel of the deceased, the accused Sunil and others went there on motorbike. They started abusing deceased Rahul. Some of the co-accused were holding sickle, country made pistol, iron tommy, iron pipe and knife. All those persons started rioting. To save himself, the complainant fled away from the spot and witnessed the incident from Disan Cold Storage, which was beside the spot of the incident. The FIR was registered against 22 accused.

3. Applicant Sunil Jadhav has been arrested on 19.07.2020, applicant Kishor Patil has been arrested on 20.08.2020,

applicant Sagar Chaugule has been arrested on 06.08.2020 and applicant Akshay Chaugule has been arrested on 24.08.2020.

4. Learned counsel Mr. Sawant for accused Sunil and Kishor vehemently argued that accused Sunil was not seen in CCTV footage of the spot of the incident. Applicant Kishor has been named first time in a supplementary statement. Learned counsel Mr. Madan holding for Mr. Suryawanshi for accused Sagar and Akshay would argue that both of them were not named in the FIR. It was the common argument of the learned counsels for the applicants that the applicants were innocent. They were not captured in CCTV footage of the alleged spot of the incident. The allegations against them is vague and does not disclose direct involvement. The applicants have been falsely implicated in the crime. There was no overt act attributed to the applicants. The applicants are behind bars for more than two (2) years. The investigation has been completed. In addition to the above argument, the learned counsel Mr. Suryawanshi has vehemently argued that considering the allegations, MCOC Act does not apply. The similarly situated co-accused Ajay has been granted bail by this Court by the order dated 29.08.2022. All the accused are entitled to parity. The bail may be granted to the applicants.

5. Learned APP has strongly opposed the application. He would argue that there were three eyewitnesses. It was a terrified crime committed in the day light. The applicant Sunil has been named in the FIR. In test identification parade, applicant Sunil, Kishor and Sagar were identified. Swords with blood stains were recovered from applicant Kishor. There are three crimes registered against the applicant Sunil and two crimes are registered against applicant Sagar. Except one accused, all accused were seen in CCTV footage. Confessional statement of the co-accused is admissible under MCOC Act. While granting the approval to file charge sheet, the names of the applicants were transpired. The offence is serious. The applicants created terror in the locality. Hence, bail may not be granted to them.

6. Learned counsel Mr. Raje for the complainant would argue that the applicants have no case for parity. Several crimes are registered against them. The witnesses have stated the specific role of each applicant. The Special Court would examine whether MCOC Act would apply or not. Learned Sessions Court rejected four bail applicants. The trial may be expedited.

7. The First Information Report does not reveal the names of applicant Kishor, Sagar and Akshay. However, the prosecution has a case that they were present on the spot of the incident. Applicant Sunil was not captured in the CCTV footage at the spot of the incident. The names of the applicants came to light first time in supplementary statement. It has been alleged against the applicant Kishor that he concealed the weapon allegedly used in the crime. The arrival of 22 persons was not captured in the CCTV footage at the hotel as well as at the toll plaza. The co-accused Ajay granted bail as he did not see in both CCTV footage. His presence was doubted as he had been in jail for two years.

8. The prosecution has evidence that the applicant Sagar, Akshay and Kishor were seen in the CCTV footage at toll plaza on Agra highway. Applicant Akshay was also seen in the CCTV footage of Ravindra, the resident of Mohadi, Dandewalababa Nagar. The knife has been recovered from applicant Sagar. Three swords were recovered at the instance of applicant Kishor. It has been alleged against the applicant Akshay that he used the country made pistol to commit the crime. As far as the applicant Sunil is concerned, he has been named in FIR but did not see in CCTV footage. Considering the role attributed to

the applicants and recovery of weapon from them except accused Sunil, the prosecution has a strong circumstantial evidence. They were seen on the places where they have plotted the conspiracy and immediately after the incident, they were seen in the CCTV footage of Toll Naka. The conduct of accused Kishor is unnatural. If he was not the part of the incident, in normal course he would not conceal the swords used in the crime in the pit in the earth. That shows his active participation in the commission of the crime. Akshay has allegedly used the country made pistol. The knife has been recovered from applicant Sagar. The prosecution has a strong evidence of conspiracy, preparation and execution of the intention.

9. To bolster the arguments, learned counsel Shri Suryawanshi, the MCOC act would not attract, has relied on the case of ***Prasad Shrikant Purohit Vs. State of Maharashtra ; (2015) 7 Supreme Court Cases 440***. The Hon'ble Apex Court in the said case in paragraph No.43 has observed thus ;

“43. Before getting into the nuances of the said definition of 'continuing unlawful activity', it will be worthwhile to get a broad idea of the definition of 'organized crime' under Section 2(1)(e) and 'organized crime syndicate' under Section 2(1)(f). An 'organized crime' should be any 'continuing unlawful activity' either by an individual singly or jointly, either as a member of an

'organized crime syndicate' or on behalf of such syndicate. The main ingredient of the said definition is that such 'continuing unlawful activity' should have been indulged in by use of violence or threat of violence or intimidation or coercion or other unlawful means. Further such violence and other activity should have been indulged in with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. Therefore, an 'organized crime' by nature of violent action indulged in by an individual singly or jointly either as a member of an 'organized crime syndicate' or on behalf of such syndicate should have been either with an object of making pecuniary gains or undue economic or other advantage or for promoting insurgency. If the object was for making pecuniary gains it can be either for himself or for any other person. But we notice for promoting insurgency, there is no such requirement of any personal interest or the interest of any other person or body. The mere indulgence in a violent activity etc. either for pecuniary gain or other advantage or for promoting insurgency as an individual, either singly or jointly as a member of 'organized crime syndicate' or on behalf of a such syndicate would be sufficient for bringing the said activity within the four corners of the definition of 'organized crime'."

10. In view of the allegations levelled against the applicants and material collected against the applicants, the application of MCOC Act is *prima facie* doubtful. Special Court may consider the same while framing the charge as the Court has to apply its mind and consider the material before it.

11. For the reasons stated above, the Court is of the view that applicant Kishor, Sagar and Akshay are not entitled for

bail. Applicant Sunil has a good case for bail. Hence, the following order :

ORDER

- (i) Bail Application No.1648 of 2022 is allowed.
- (ii) Bail Application Nos.1563 of 2022 and 1625 of 2022 stand dismissed.
- (iii) Applicant **SUNIL RAMESH JADHAV** in Bail Application No.1648 of 2022 be released on bail on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees One Lakh only) with one solvent surety of like amount or two solvent sureties of Rs.50,000/- each, in Crime No.67 of 2020, registered by Police Station Mohadi Nagar, District Dhule, for the offences punishable under Sections 302, 120-B, 201, 143, 147, 148, 149, 504, 506 read with Section 34 of the IPC, Section 3/25, 4/25, 27 of the Indian Arms Act and Section 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act), on the condition, not to enter the place where the witnesses reside, for six (6) months from the date of his release and provide

his residential address and mobile numbers to the police.

- (iv) All Criminal Applications to assist learned APP are allowed.

(S. G. MEHARE, J.)

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vmk/-