

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 740 OF 2021

Nitin @ Pappu Balu Pawar

...Appellant

Versus

1. The State of Maharashtra

2. Adarsh Dipak Gaikwad

...Respondents

Ms. Shubhangi Parulekar, Advocate for Appellant.

Mrs. S. D. Shinde, APP for Respondent-State.

Mr. Mahadji Phalke, for Respondent No.2.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 8th DECEMBER, 2022.

P.C.:-

. By the present Appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short "SC and ST Act"*) read with Section 21 (4) of the Maharashtra Control of Organized Crimes Act, 1999 (*for short "MCOC Act"*). The Appellant is seeking bail in connection with C.R. No.122 of 2020 registered with Indapur Police Station, District Pune for the offences punishable under Sections 302, 324, 323, 241, 143, 147, 149, 504 and 506

of the Indian Penal Code (*for short "IPC"*) and under Section 3(2)(va) of SC and ST (Prevention of Atrocities) Act and under Sections 3(1)(ii), 3(4) of the MCOC Act.

The learned Additional Special Judge under MCOC Act, Pune has rejected the Application of Appellant for bail filed below Exhibit-4 in MCOC Case No. 452 of 2020 by its impugned Order dated 29th June, 2021.

2. Heard Ms. Parulekar, learned Advocate for the Appellant, Mrs. Shinde, learned APP for State and Mr. Phalke, learned Advocate for Respondent No.2. Perused record annexed to the Appeal.

3. Appellant is original accused No.5 in the aforestated crime.

It is the prosecution case that, on 14th February, 2020 at about 2:00 pm, the principal accused namely Akash @ Anna Rajendra Kolekar along with other 6 to 7 accused persons including Appellant assaulted Akshay Chandanshive (deceased). Initially, crime was registered with Akluj Police Station, District Solapur, bearing C.R. No. 62 of 2020 under Section 302 and other related Sections of Indian Penal Code. The said crime was subsequently transferred to Indapur Police Station, District Pune and said Police re-numbered it as C.R. No.122 of 2020. During the course of investigation it was revealed to the Police that, the said crime was committed by the Organized Crime Syndicate headed by accused No.1 Akash @ Anna Rajendra Kolekar and his gang members.

4. A proposal for invoking provisions of MCOC Act was therefore

submitted to the Competent Authority. The Competent Authority granted prior approval as contemplated under Section 21(1)(a) of MCOC Act. As the deceased was belonging to Schedule Caste, the provisions of SC & ST Act are also applied to the present crime.

5. After completion of investigation, the Sub-Divisional Police Officer, Baramati Division, District Pune, submitted his proposal to the Competent Authority seeking sanction under Section 23(2) of MCOC Act for submitting charge-sheet before the Court of Competent Jurisdiction and for taking cognizance of the offence. The Competent Authority, by its Order dated 3rd August, 2020 granted sanction under Section 23(2) of the MCOC Act. The prosecuting agency thereafter submitted final report before the Special Court.

6. Learned Advocate for the Appellant submitted that, on the date of arrest of Appellant i.e. 20th February, 2020, the Appellant had suffered fracture to both his hands and therefore it was not possible for him to hold wooden log/stick in his hand at the time of commission of the alleged offence on 14th February, 2020. That, at the most it can be inferred that, the Appellant was present along with Akash @ Anna Kolekar at the scene of offence. However, the same cannot be a circumstance to even infer that, the Appellant had actively participated in the commission of said offence of assault and causing homicidal death of deceased Akshay Chandanshive. That, there are material contradictions with respect to post mortem notes of

deceased and statements of witnesses and therefore benefit of the same be given to the Appellant at this stage itself. She submitted that, there is no other evidence to indicate that, the Appellant had in fact assaulted the deceased and therefore he may be released on bail.

Per contra, learned APP and learned Advocate for Respondent No.2 vehemently opposed the Appeal and supported the impugned Order dated 29th June, 2021.

7. Perusal of record indicates that, there are more than two charge-sheets filed against the Organized Crime Syndicate headed by Akash @ Anna Rajendra Kolekar of which the Appellant is a member. It further *prima facie* appears that, the Appellant has also participated in more than one offence along with head of the said Organized Crime Syndicate. As far as the present crime i.e. C.R. No. 122 of 2020 is concerned, the presence of Appellant at the scene of offence along with Akash @ Anna Rajendra Kolekar is not in dispute. Perusal of the statement of eye witnesses clearly indicates that, the Appellant actively participated in the commission of said offence and assisted head of Organized Crime Syndicate i.e. Akash @ Anna Rajendra Kolekar in commission of murder of Akshay Chandanshive.

8. In view of above, it is difficult for this Court to record a finding as contemplated under Section 21(4) of MCOC Act that, the Appellant is not *prima facie* guilty of the offence alleged against him.

9. Perusal of the impugned Order indicates that, the trial Court

has not committed any error either in law or on facts while passing the impugned Order.

10. We find no merits in the Appeal and is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)

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