

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.591 OF 2022

Shrinivas @ Sinnu Anna Vinaywar,
Age 48 Years, Occ. Business,
R/o 280/17, Behind New Wine Shop,
Kadri CT, Kamptee, Tah. &
Dist. Nagpur 441 401

.... **APPLICANT.**

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Pachpaoli Police Station,
Dist. Nagpur

.... **NON-APPLICANT.**

Shri S.P.Bhandarkar, Adv.a/w Shri Ganesh Mate, Adv. for applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 20th AUGUST, 2022.

ORAL ORDER:

The applicant is seeking bail in Crime No. 255 of 2016 dated 02.03.2016, registered with Pachpaoli Police Station for the offences punishable under Sections 365, 302, 201, 120(B), 143,

144, 147, 148, 149, 364, 121 of Indian Penal Code, 1860 and Section 3(1)(i)(ii), 3(2), 3(4), 3(5) and Section 4 of Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act').

2. It is the case of the prosecution that the complainant, the wife of deceased Manish Shriwas, lodged the complaint that on 25.02.2012 while her husband Manish Shriwas was at home, he received a call from one Chotu Bagade who is the accused no.8, and thereupon, the deceased Manish left the house to meet him and since then he did not return. She further states that she was under the belief that the deceased who was involved in a murder case to avoid arrest concealed himself. It is stated that she subsequently came to know that accused Isak Maste and Chotu Bagade and others kidnapped her husband and did some wrong to him. Accordingly, she lodged a complaint whereupon an offence came to be registered on 01.03.2016.

3. The complainant on 25.03.2020 gave a supplementary statement stating therein that whenever she asked the accused about her husband, they said that he is safe and she believed in them as she had no other option. She then states that she now

came to know from her brother in law and other people that Ranjit Safelkar accused no.4 and other accused had committed murder of her husband and disposed of his body.

4. I have heard the learned counsel for the applicant and learned APP for the State.

5. Shri Bhandarkar, learned counsel for the applicant has argued as under:

a. According to the prosecution the deceased died on 26.02.2012. Whereas, the complaint was registered on 02.03.2016 i.e. after more than four years. So there is a delay in lodging the First Information Report.

b. The dead body of the deceased is not recovered, but, a few pieces of bone at the instance of one of the co-accused recovered under Section 27 of the Indian Evidence Act.

c. There is no credible evidence to connect the present applicant with the crime in question.

d. If the confessional statement of the applicant is considered holistically, it can be seen that, the applicant was neither

a part of the conspiracy nor has participated in the incident of either kidnapping or assault.

e. In respect of antecedents against the applicant there are no commonness or commonality in the offences.

f. There is nothing to suggest or show that the applicant is the member of the alleged organized crime syndicate operating under the leadership of Sharad @ Kalu Hate, accused no.1.

g. The investigation is over and the chargesheet has been filed, as such further custody of the applicant is not necessary.

6. On the other hand, Shri Mirza, learned Additional Public Prosecutor strongly opposed the application and argued as under :

(i) There is sufficient material to show that the applicant was present in the meeting wherein a conspiracy was hatched to eliminate the deceased.

(ii) The applicant has given a confessional statement under Section 18 of the Act, 1999, wherein he has admitted his presence in the said meeting.

(iii) There are criminal antecedents to the discredit of the applicant and therefore there is every possibility that if the applicant is released on bail, he may commit the similar offence.

(iv) The offence is serious and considering that the provisions of the Act, 1999 are invoked in this case, it is prayed that the application may be rejected.

7. I have perused the chargesheet and First Information Report.

8. In this case the prosecution is mainly relying upon the confessional statement of the applicant, recorded on 11.05.2021.

9. The prosecution's whole case is based on the allegation that, the applicant attended the meeting held in the office of co-accused Ranjit Safelkar with the other co-accused, wherein a conspiracy was hatched to eliminate the deceased.

10. Section 18 of the MCOC Act makes confession made to Police Officer admissible as substantive evidence, and the provision start with a non-obstante clause which over rights in consistent or contrary in the Code of Criminal Procedure and the Indian Evidence Act, 1872, the legislative intend was to dilute the

rigor of Section 162 of the Code and Sections 25 and 26 of the Indian Evidence Act, 1872.

11. In this case the confession statement of the applicant says that, the applicant was called by co-accused Ranjit Safelkar in his office for having a discussion over some religious programme in a temple situated in corner of his office, where the other co-accused subsequently came and therefore, the co-accused Ranjit Safelkar asked the present applicant to wait for some time. The applicant further states that while he was waiting there, the co-accused discussed among themselves, the plan to eliminate the deceased Manish Shriwas.

12. Thus, except this piece of evidence that the applicant was present in the meeting wherein the conspiracy was hatched to eliminate the deceased, there is nothing to show that the applicant was part of conspiracy or he participated in the alleged crime of either kidnapping or assault on Manish Shriwas.

13. The coordinate bench of this Court in the case of *Rajendra s/o Gulabrao Armarkar Vs. State of Maharashtra*¹, has

dealt with the scope, width and amplitude of the rigors of Section 21(4) of the MCOC Act and has held thus:-

20. The scope, width and amplitude of the rigors of Section 21(4) of the MCOC Act fell for consideration before the Apex Court in Ranjitsing Brahmajeetsingh Sharma v. State of Maharashtra and another, (2005) 5SCC 294.

21. The Apex Court articulated that, as held in Narendra Singh and Another v. State of M.P., (2004) 10 CC 699, presumption of innocence is a human right and that the expansive meaning judicially assigned to the guarantee to life enshrined in Article 21 of the Constitution of India envisages not only protection of life and liberty, but a fair procedure. The Apex Court then proceeded to observe that Section 21(4) of the MCOC Act must be interpreted keeping in view the aforementioned salutary principle.

It would be fruitful to reproduce paragraph 38 of the said decision, which reads thus :

“38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or

commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

22. The Apex Court opined that the restriction on the power of the Court to grant bail should not be pushed too far and bail may be granted if the Court, having regard to the material brought on record is satisfied that in all probability the accused may not be ultimately convicted.

23. The Apex Court then articulated that the provisions of the MCOC Act must receive a strict construction to muster the test of reasonableness and proceeded to note that Section 21(4) of the MCOC Act does not make any distinction between an offence entailing life imprisonment and an offence entailing imprisonment for a year or two. The Apex Court further held that in case of circumstantial evidence, not only culpability or mens rea should be prima facie established the Court must also consider the question as to whether the circumstantial evidence is such as would complete all the links in the chain.

24. The Apex Court further opined that the Court is not expected to render a positive finding that the accused has not committed an offence under the Act nor to record a finding as to the possibility of the accused committing a crime after grant of bail. Notably, the Apex Court articulated that the offence in futuro must be an offence under the MCOC Act and not any offence.

25. The Apex Court further articulated that while the evidence may not be weighed meticulously and the finding may rest on the basis of broad probabilities, having regard to the provisions of Section 21(4) of the MCOC Act, the

Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the material collected against the accused may not justify a judgment of conviction.

26. The MCOC Act is not the only special enactment which seeks to restrict the power of the Court to grant bail. Similar restrictions and rigors are provided by several special enactments and an illustrative reference may be made to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 212(6) of the Companies Act. The provisions akin to Section 21(4) of the MCOC Act are considered and analysed in several decisions and the crystallized position of law appears to be that while the accused is required to make out a case, which goes beyond 'a prima facie case', it is not expected of the accused to satisfy the Court that acquittal is inevitable. The satisfaction, which is envisaged, is the satisfaction of the Court that on broad probabilities, the material collected during investigation may not culminate in conviction. Implicit in the exercise is the permissibility to consider the defence of the accused.

27. The rigors of Section 21(4) and the fetters on the power of the Court to grant bail are not unshackled merely on demonstrating a prima facie case. Reasonable grounds to arrive at the satisfaction that the accused may not be convicted of the offence contemplate that on the basis of the material collected during investigation the court must be satisfied that there are substantial probable causes to arrive at such satisfaction. Axiomatically, while the accused is not expected to demonstrate that acquittal is a forgone conclusion, the material on record must impel the Court on broad probabilities to arrive at the satisfaction that the accused may not be ultimately convicted."

14. In the teeth of above referred well settled principle of law if the confession statement of the applicant which is considered

holistically *prima facie*, it can be said that the applicant was not the part of the meeting or discussion held for hatching a conspiracy to eliminate the deceased. In the circumstances, mere presence of the applicant in the said meeting is not sufficient to rope the applicant into the alleged offence by labeling him as a conspirator or the member of the syndicate.

15. In this case, there is no material to show that the applicant has committed any offence individually as a member of the syndicate or along with the other members including leader of the gang of the said organized crime syndicate.

16. Furthermore, the antecedents against the applicant pointed out by the learned APP, cannot be said to be relevant as there are no commonness or commonality. Moreover, in most of the offences, the applicant has been already acquitted.

17. Thus, considering the allegations against the applicant, the incriminating material and other material in totality, I have no hesitation to say that there is a reasonable ground to believe that the applicant is not guilty of the alleged offence.

18. Furthermore, considering the fact that there are no commonality in the present offence and antecedents of the applicant, there is a reasonable ground to believe that there is no possibility that if the applicant is released on bail, he will commit the similar offence.

19. In the circumstances, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order.

- a) The criminal application is **allowed**.
- b) It is directed that in Crime No. 255 of 2016, dated dated 02.03.2016 registered with Police Station, Pachpaoli, Tah. and Dist. Nagpur, for the offences punishable under Sections 365, 302, 201, 120(B), 143, 144, 147, 148, 149, 364, 121 of Indian Penal Code, 1860 and Section 3(1)(i)(ii), 3(2), 3(4), 3(5) and Section 4 of Maharashtra Control of Organised Crime Act, 1999, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Police Station on every 1st and 16th day of each month between 10.00 a.m. to 12.00 noon, till the culmination of trial.

d) The State is at liberty to apply for cancellation of bail, in case of breach of any condition or the applicant commits any similar offence.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]

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