



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.689 OF 2023**

HARISH @ LADDHA MANOJ BAHETI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Vishal A. Chavan i/by Mr. V. S. Undre, Advocate for the Applicant.
Mr. K. S. Patil, APP for Respondents-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 06th NOVEMBER, 2023.
PRONOUNCED ON : 28th NOVEMBER, 2023.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.119 of 2022 registered with Vimantal Police Station, Dist. Nanded for the offences punishable under Sections 302, 307, 120(B), 201, 34 of the Indian Penal Code and Sections 3/25, 27(2) of the Arms Act and Sections 3(1) (i), 3(2) 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOC Act').

2. The investigation was set in motion on the basis of the report lodged by Anita Sanjay Biyani dated 05.04.2022 alleging that when her husband alighted from the vehicle to enter in the bungalow two unknown assailants with masked faces open fire of 10 to 12 rounds of bullets causing death of her husband Sanjay Biyani and serious injuries to his companion namely Siddheshwar. Accordingly, Crime No.119/2022 has been registered against unknown culprits. The investigation progressed. Finally charge-sheet came to be filed against in all 16 accused persons for the aforesaid offences including the applicant. The applicant is shown as accused no.10 and alleged to be

conspirator in murder of the victim Sanjay Biyani in connivance with the other accused persons. The applicant alleged to have found in the company of main assailant i.e. Sunil @ Deepak sent by main conspirator Harwindersingh @ Rinda. The applicant alleged to have made arrangement for stay of the assailants at Nanded. He was continuously in touch with the assailant Sunil @ Deepak. The applicant was knowing about conspiracy of murder. He had conversation with the main accused Harwindersingh @ Rinda. The applicant recorded his confessional statement under Section 18 of the MCOC Act. Similarly, the confessional statement of co-accused in clear terms depicts involvement of the applicant in the conspiracy. Three mobile phone instruments and Scooty used in executing the crime are recovered at the instance of the applicant. The applicant has been arrested on 04.06.2022. Since then, he is behind the bar. The prayer of the applicant for grant of bail has been rejected by the Special Court vide order dated 16.02.2023. Hence, this application.

3. Mr. Deshmukh, learned Senior Advocate appearing for the applicant would submit that the applicant has been falsely implicated in the aforesaid crime. The FIR had been lodged against unknown persons. The applicant has been arrested on suspicion. The charge-sheet is filed against in all 16 accused persons. The applicant is not attributed any role in actual incident of murder. However, he is alleged to be abator in the conspiracy. Mr. Deshmukh would submit that although the provisions of MCOC Act are sought to be invoked in the present case, there is no material in the entire charge-sheet by which the applicant can be booked under the provisions of the said Act. He would submit that there are no criminal antecedents against the applicant to invoke the provisions under MCOC Act. He would

point out that approval for invoking the provisions under MCOC Act is illegally granted against the applicant in absence of criminal antecedents. The confessional statement of the co-accused only suggests that the applicant took main assailant Sunil @ Deepak to many places, however, it does not indicate that the applicant had knowledge of the conspiracy or intention of the assailant to commit murder of the victim. He would submit that seizure of mobile phones or Scooty is of no consequence. There is nothing to indicate the money trail between applicant and co-accused persons. Mr. Deshmukh by inviting attention of this Court to the proposals submitted by police for externment of the gang leaders, submit that the applicant is not named as gang member. He would further submit that so called confessional statement recorded under Section 18 of the MCOC Act is not in conformity with the procedure prescribed under Section 18(3) of the MCOC Act. This Court has considered aforesaid aspect while granting bail to the co-accused persons. In support of his contentions he relies upon bail order of accused Sarhan Bin Ali Alkaseri in Bail Application No.1110/2023 dated 20.07.2023. Mr. Deshmukh would also point out that accused Gurupreetsingh @ Danya has been enlarged on bail by order dated 16.02.2022 passed by the Sessions Court. Accused Kamalkishor Yadav has been released on bail vide order dated 12.12.2022. Accused Karanjitsingh Shahu is enlarged on bail by order of this Court in Bail Application No.595/2023 dated 27.04.2023. He would, therefore, submit that by applying principles of parity, the applicant is entitled for grant of bail. To buttress the submissions advanced, Mr. Deshmukh would place his reliance on the judgment of the Supreme Court of India in the matter of ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another***¹ and judgment in case of ***Shamil***

¹ (2005) 5 Supreme Court Cases 294.

Saquib Nachan Vs. State of Maharashtra² and submits that Section 21(4) of MCOC Act cannot be construed as absolute bar for grant of bail. The purposive construction of the provision needs to be applied. The satisfaction of Court contemplated has to be interpreted keeping in mind the object of the provision and not as absolute bar. He would submit that in light of the procedural infraction mandated under Section 18(3) of the MCOC Act, the confessional statement of co-accused cannot be given sanctity of valid evidence. He would further submit that the applicant is behind the bar for more than 16 months. The trial would take its own course, since few accused persons are yet to be arrested. The indefinite incarceration of the applicant would be contrary to the spirit of Article 21 of the Constitution of India.

4. The learned APP strongly opposes the prayer for grant of bail. He would submit that the applicant is one of the major contributor in the conspiracy and member of the gang, who has given effect to the heinous crime of murder for non-fulfillment of demand of ransom. He would submit that role of the applicant is surfaced during the course of investigation. The confessional statement of the applicant is recorded under Section 18 of the MCOC Act by the competent officer, wherein the applicant has narrated his role in commission of offence. He would further submit that the statement of the witnesses as well as confession of co-accused person depict complicity of the applicant in commission of offence. He would submit that the applicant was continuously in conversation with the main conspirator i.e. accused no.1 Harwindersingh @ Rinda, who runs the racket for giving effect to the recovery of ransom and murders in pursuance of his demands. The learned APP would submit that applicant cannot claim parity with the co-accused persons who are enlarged on bail, since the

² 2013 ALL MR (Cri.) 2273.

role of the applicant is different and significant as compare to the accused persons who are enlarged on bail. He would further submit that after arrest of the assailant Sunil @ Deepak, his confessional statement has been recorded under the provisions of MCOC Act, wherein role of the applicant has been clearly attributed. He would, therefore, submit that there is sufficient evidence to bring home complicity of the applicant in commission of offence being conspirator. Hence, opposes the prayer for grant of bail.

5. Having considered submissions advanced, apparently during the course of investigation role of the applicant in commission of offence has been surfaced. Perusal of the material in charge-sheet depicts that the applicant provided valuable assistance to the main assailant, since the date of his arrival at Nanded. The applicant recorded his confessional statement under MCOC Act. Although, such statement is assailed on the ground of procedural lapses, it would be subject matter of trial. From the confessional statement of the co-accused person as well as witnesses, it can be gathered that the applicant has arranged for stay of the main assailant, accompanied them while collecting pistol. He accompanied main assailant while purchasing clothes. The applicant was continuously in conversation with the main accused Harwindersingh @ Rinda. The applicant had knowledge about conspiracy that the victim was to be killed. In that view of the matter, particularly considering the gravity of the offence and role of the applicant, it would be difficult to accept the contention of the learned Senior Advocate that the applicant has played limited role and entitled for parity with the accused persons who are already enlarged on bail.

6. Pertinently, accused no.14 Kamalkishor Yadav is not charge-sheeted for the offence under MCOC Act. Accused no.13 Gurupreetsing @ Danya is released on bail observing that there is nothing on record to connect him with the offence or to brand him as member of the conspiracy. Accused Sarhan Bin Ali Alkaseri is granted bail finding that motorcycle used in the crime was subject matter of theft for which report was lodged long back and there is no other evidence to believe that applicant was member of syndicate. As rightly pointed out by the learned APP, the release of the accused Sarhan Bin Ali Alkaseri is prior to recording of the confessional statement of the co-accused Sunil @ Deepak.

7. Apparently, the confessional statement of the accused Sunil @ Deepak who is main assailant has been recorded under MCOC Act, which clearly depicts that the applicant has assisted him during his stay in the vicinity of the Nanded for the purpose of giving effect to the crime. Although, it is submitted by the learned Senior Advocate that the confessional statement of the co-accused Sunil @ Deepak does not stand to the scrutiny for want of mandatory procedural compliance under Section 18(3) of the MCOC Act, such question needs to be left for consideration during the trial. *Prima facie*, considering the seriousness of the offence, role attributed against the applicant and relevant provisions of MCOC Act, I do not find entitlement of the applicant to release him on bail. Hence, Bail Application is rejected.

(S. G. CHAPALGAONKAR)
JUDGE