



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

BAIL APPLICATION NO. 549 OF 2024

MAHESH VITTHAL WAGH
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. A. M. Gaikwad holding for
Mr. R. K. Temkar

APP for Respondent : Smt. A. S. Mantri

...

AND/WITH
BAIL APPLICATION NO. 163 OF 2024

AKASH PANDURANG SHINDE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. N. S. Ghanekar
APP for Respondent : Smt. A. S. Mantri

...

AND/WITH
BAIL APPLICATION NO. 474 OF 2024

KIRAN BABAN KOLPE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. R. R. Karpe
APP for Respondent : Smt. A. S. Mantri

...

AND/WITH
CRIMINAL APPLICATION NO. 1388 OF 2024 IN BA/474/2024

ANIL RAMCHANDRA GHADGE
VERSUS
KIRAN BABAN KOLPE AND ANOTHER

...

AND/WITH
WITH CRIMINAL APPLICATION NO. 1569 OF 2024 IN BA/549/2024

ANIL RAMCHANDRA GHADGE
VERSUS
MAHESH VITTHAL WAGH AND ANOTHER

...

Advocate for Applicant : Mr. S. V. Sudrik holding for
Mr. S. S. Jadhavar (Cr. Application Nos.1388 and 1569 of 2024)
AGP for Respondent/State : Smt. A. S. Mantri

CORAM : S. G. MEHARE, J.

DATE : 03-05-2024

PER COURT :-

1. Heard the learned counsels for the applicants, learned A.P.P. for the respondent/State and the learned counsel for the complainant.

2. The applicants/accused are seeking bail in C.R.No.641 of 2023, registered with Police Station Rahuri, District Ahmednagar, for the offences punishable under Sections 394, 395, 364A, 323, 341, 427, 504, 506, 120B read with Section 34 of the Indian Penal Code, Sections 4/25 of the Arms Act, Sections 37(1)(3)/135 of the Maharashtra Police Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999.

3. The prosecution case in brief is that the incident happened on 12.08.2023 at 9.30 p.m. near Mula Dam Phata on Ahmednagar Manmad highway road, near one Pawar petrol pump. The complainant and his driver went to Ahmednagar. In the morning, they went to the hostel of the complainant's son. They also went to One electric material shop owned by Pradeep Nahar behind A.D.C.C. Bank. He took Rs.6,00,000/- from him as a hand loan and already had Rs.3,00,000/- with him at about 8.30 p.m. They started for Rahuri. When they reached near the spot of the incident, a silver colour car intercepted their car, and four persons

between the age group of 25 to 35 alighted from a silver colour car. They had masked their faces and were holding sharp kattis. One of them broke the glass of the driver's side. He opened the door, dragged the driver from his seat, and sat him on the rear seat, where two sat with them. Two persons sat on the front side. They had covered their eyes with cloth. They took Rs.9,00,000/-, his golden chain and golden ring from his right hand finger. They travelled for half an hour and left at one place. They again demanded money from him. They assaulted him. They also threatened to kill him if he would not pay them money from his brother. The first information report was against unknown persons. The crime was under investigation. P.S.I. Tushar, Crime Branch, has received secret information. So he laid a trap near one Mula Dam phata on 16.06.2023. Police found six persons walking there. They got suspicion against them. Hence, he went towards them. So, they fled away. Out of six, four were apprehended, and two fled away. From amongst those four, the applicants are not the persons apprehended. However, the persons apprehended told police that the persons who fled away were also not the applicants before the Court. During the inquiry with them, the police learnt that they were rekeying with applicants Kiran and Aakash for one month.

4. Then, police collected CCTV footage. The first CCTV footage was collected from the shop of Kunal Nahar. In that CCTV footage, the silver colour car was seen following the car of the complainant.

It was noticed that a grey colour Duster car was following the car of complainant. However, it had no number plate. Then the same car was found at 8.40 p.m. near S.B.I. Chowk, and then seen near Patil Hospital at 23.12. p.m. Before that, the same car was seen near Avinash Classes at 18.08 hours. On the basis of this material, the prosecution arrested the applicants and recovered from them the money and golden chain from the person of the accused Kiran Kolap. Then, the police obtained the sanction to apply for MCOCA, and accordingly, MCOCA was applied. Applicant Mahesh was granted bail. However, by the Court's order, his bail was, and he was arrested as MCOCA was applied.

5. The common thread of the arguments of the learned counsel for the applicants is that the material collected against the accused is not sufficient to involve them in the crime. There were no crimes registered against them applying for MCOCA. The crimes registered against Aakash were for the body offences, and the present applicants were co-accused in none of the crimes. It has also been pointed out that in most cases he has been acquitted. There is no evidence to believe that those were the members of the organized crime syndicate.

6. As far as applicant Kiran is concerned, this is the first crime of this type registered against him. He is a Police Constable. However, he has no good terms with his officials as he had

impugned the order of the seniors in the Maharashtra Administrative Tribunal. He has been falsely trapped in the crime. He has no concern with said matter which he is allegedly chasing the car of the complainant. Co-accused Anil Maldode was shown walking on foot near the shop of Nahar. None of the CCTV footage shows that the applicant, Kiran was in the car, and there is no evidence of who was driving that car. In the first information report, the description of the golden chain is not given, nor the make of the vehicle mentioned. In CCTV footage, it has also been observed that there was a gap of 25 minutes in reaching these two different cars at SBI Chowk. It is a heavy-traffic road. Accused Kiran explained that he owned the golden chain that was recovered. The strict procedure of recovery and identification of muddemal property was not followed. After recovering the golden chain from his person, the complainant was shown it, and he said it was his golden chain, and inference is drawn that it was stolen property. Accused Kiran was charged of the offence punishable under Section 376 of the Indian Penal Code. However, he has been acquitted of that crime. Except for this crime, he has no criminal history.

7. So far as applicant/accused Akash is concerned, there are crimes of petty offences against him. Learned counsel for him has given details from the chart produced from the chargesheet and argued that some offences are punishable with imprisonment of

less than three years, hence, insufficient to attract MCOCA. Another common thread of the arguments of the learned counsel for the accused is that a single crime is not sufficient to attract MCOCA. The recovery of money is not incriminating evidence against the accused. The recovery of Rs.2,00,000/- from the house of co-accused Aakash also does not link him with the crime. He had never been in contact with any of the co-accused before the incident. He was not a member of an organized crime syndicate. Since many crimes are to his discredit, he has been roped in a serious crime. At the most, this case may be a road robbery committed by an unknown person. The waist belt is a common article. Its recovery from the accused does not linked to the crime.

8. Learned counsel for applicant/ Mahesh states that he has inadvertently filed an application before the Sessions Judge for default bail. He would withdraw that application, and this application may be decided upon.

9. Learned A.P.P. strongly opposed the applications, contending that accused Kiran Kolape is the mastermind. He is from the police department. He has good knowledge of crime and criminals. The learned counsel assisting her added that he collected all habitual criminals to commit serious crimes. He had been chasing the complainant since from Ahmednagar. He had eight cell phone numbers. He knew the loopholes of the law; hence, he

deliberately removed the number plate from the car chasing the complainant. He has rightly pointed out that to have more than one chargesheet against all members is not the requirement or condition of Section 2(1)(d) of the MCOC Act. They have vehemently argued that the evidence of consistently chasing vehicles is strong evidence against them. The CCTV footage recovered and transcribed clearly established that all accused were members of organized crime syndicate. They have committed the offence with intent to gain pecuniary benefit. Accused Kiran was the leader of the organized crime syndicate. The learned A.P.P has placed on record a detailed chart about timing and places where the car belonging to accused Kiran was chasing the complainant. It has been prayed that the offence is serious and that the police personnel is the prime criminal in this case. The common man should be protected from such criminals. She also referred to the findings of the Sessions Court while rejecting the application. They prayed to dismiss the applications.

10. The prime evidence of the prosecution is the CCTV footage. The Court has gone through the entire chargesheet and the papers and documents referred to by the learned counsels for the respective parties. The first information report is silent about the make of the vehicle chasing it. There appears to be some discrepancy in the timing of the chasing of the car. One of the CCTV footages was taken after the incident at Ahmednagar. It was

30 km away from the spot of the incident. Against applicant Kiran, this is the first crime of this type. However, co-accused Aakash had antecedents to his discredit. In many cases, he has been acquitted. Some of the cases are of bodily offences, such as the Police Act and the Prohibition Act. Considering the material collected by the prosecution on record in-toto, it would be difficult to accept at this juncture, whether MCOC Act applied to the case or not.

11. At the most, it may be a case of road robbery. Out of a huge amount of Rs.9,00,000/-, a small amount has been recovered. Whether the golden chain belongs to the complainant or accused Kiran Kolape, is a matter of investigation by producing the evidence before the trial Court. Bare involvement of the habitual offender appears not sufficient at this juncture to believe that it is a organized crime. At this juncture, whether the accused are members of the organized crime syndicate is not clear. Co-accused Akash is involved in the road robbery. In the crimes registered against them, none of the co-accused were co-accused with him in those crimes. The investigation has been completed. Haring was granted to the learned A.P.P. The Court has expressed doubt about an offence under the MCOC Act. The Court also discussed the history of the co-accused and satisfied that there are no reasonable grounds to believe that the accused is likely to commit any offence while on bail. However, considering the gravity of the

offence, blanket bail could not be granted to them. Certain conditions should be imposed

12. For the above reasons, the following order is passed;

ORDER

- i) The applications are allowed.
- ii) Applicants Mahesh Vitthal Wagh, Akash Pandurang Shinde and Kiran Baban Kolpe be released on bail, on furnishing PB and SB of Rs. 1,00,000/- with one or two solvent sureties of the amount of Rs.50,000/- each of the like amount, in the above crime for the aforesaid offences, on the conditions that,
 - (a) They shall keep the concerned Police Station informed on every first and last Saturday of a month either physically or by phone, if physically not present in the town, between 10.00 to 12.00 p.m. till the trial is concluded.
 - (b) They shall attend the trial on each date and cooperate with the Court and the prosecution to complete the trial as soon as possible.
 - (c) They shall not involve in an identical crime in future.
 - (d) They shall not tamper with the prosecution witnesses.
- iii) Criminal Applications stand disposed of.

(S. G. MEHARE)
JUDGE