

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2687 OF 2022

Bapu @ Kumar Prabhakar Nayar	]	
Age: 41 years, Occ: Business,	]	
Residing at B-35/13, Uppar Indira Nagar,	]	
Bibvewadi, Pune – 411 037.	]	
At present Yerwada Central Prison, Pune	]	Applicant

Versus

The State of Maharashtra	]	
Through Faraskhana Station,	]	
Pune Vide C.R. No.1094/2020	]	Respondent

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Mr. Sudeep Pasbola a/w Mr. Priyal G. Sarda a/w Mr. Shubham Sane,
for Applicant.

Mr. A.A. Palkar, A.P.P, for Respondent – State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 11th JANUARY, 2024.
PRONOUNCED ON : 16th JANUARY, 2024.

ORDER:

1. Applicant – Bapu @ Kumar Prabhakar Nayar who is said to be a Kingpin of an organized crime syndicate moved an application seeking his release on bail in C.R. No.1094 of 2020 registered with *Faraskhana* Police Station, *Pune* of the offences punishable under Sections 302, 143, 147, 148, 149, 120B, 109, 201 of the Indian

Penal Code (for short “I.P.C”) and under Section 4 r/w 25 of the Arms Act and under Section 37 (1) r/w 135 of the Bombay Police Act and also under Sections 3 (1) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organised Crime Act, 1999 (for short “MCOC” Act).

2. Briefly stated, prosecution story is as follows.

3. In the midnight of 2nd October, 2020, accused Sunny Kolte, Sandip Kolte, Rohit Kamble, Rahul Ragir and two others assaulted one Deepak Maratkar in *Budhwar Peth* area at *Pune* by means of a sharp-edged weapon, due to which, deceased succumbed to the injuries sustained on the vital parts of his body.

4. Rahul Alamkhane – brother in law of the deceased lodged an First Information Report (for short “F.I.R”) around 9.22 a.m on 2nd October, 2020.

5. As usual, Investigating Machinery arrested all the accused in this crime. Statements of the witnesses were recorded, *panchanamas* were drawn and weapons of offence also came to be seized.

6. However, during the course of investigation, it revealed that the applicant, being a Don of the said organized crime syndicate was carrying his activities through his aid – Swapnil @ Chocolate Satish Modve and has been involved in hatching conspiracy to eliminate Deepak Maratkar. The applicant was arrested on 2nd November, 2020 and since then he is behind bars.

7. Prior to approval under Section 23 (1) of the MCOC Act was granted on 20th October, 2020, so also a sanction thereafter was accorded under Section 23 (2) of the MCOC Act on 9th February, 2021 by the competent Authority and consequently, a charge-sheet came to be filed against the applicant and others.

8. I heard Mr. Pasbola, learned Counsel for the applicant at a considerable length as well as Mr. Palkar, learned A.P.P.

9. Mr. Pasbola would argue that this is a classic example of false implication of the applicant at a belated stage only in order to invoke stringent provisions of the MCOC Act. At the outset, Mr. Pasbola would submit that in light of release of three accused earlier by this Court viz: Mahendra Saraf, Ashwini Kamble and

Chandrashekhar Waghel, the present applicant deserves to be released on the ground of parity, as the role attributed to the applicant is on a lower footing than that of accused Mahendra Saraf.

10. With the assistance of Mr. Pasbola, I have meticulously gone through the record and proceedings.

11. While strongly objecting the application, Mr. Palkar would argue that the applicant being a Kingpin of an organized crime syndicate and has been involved in providing finance and funds to the assailants who alleged to have eliminated deceased Deepak Maratkar. The A.P.P has invited my attention to section 2 (1) of the MCOC Act, which defines “abet” in the context of MCOC Act. According to Mr. Palkar, prosecution has shown a nexus between the applicant and rest of the accused including the assailants in commission of the offences alleged and, therefore, the prosecution has rightly invoked the provisions of the MCOC Act.

12. As a matter of fact, before considering the material on record, the applicant is entitled to be enlarged on the ground of parity itself

for the simple reason that this Court in an order dated 14th October, 2022 (Coram: Prakash D. Naik, J.) *qua* Mahendra Madanlal Saraf observed that the applicant has been incarcerated for a period of two years against whom there are no criminal antecedents. It is also observed that there is no material showing any direct connection of the applicant with the Kingpin of the organized crime syndicate. The F.I.R named the said applicant as a suspect on account of his animosity with the deceased. The said applicant was not present at the scene of the offence.

13. Similarly, accused – Ashwini Kamble was also released by another Bench of this Court (Coram: N.R. Borkar, J.) by an order dated 9th January, 2023 on the ground of parity *qua* accused – Mahendra Saraf.

14. Turning back to the case at hand, indubitably there are several offences against the applicant under the MCOC Act, meaning thereby, to some extent, the prosecution story that he is a Kingpin of an organized crime syndicate appears to be true. Ashwini Kamble, Mahendra Saraf and one Niranjana Mahankale were arrested on 2nd October, 2020. Rahul Ragir, Rohit Kshirsagar,

Rohit Kamble and Sunny Kolte were arrested on 4th October, 2020. Sandip Kolte and Lakhan Dhavare were arrested on 5th October, 2020. Thereafter, on 7th October, 2020, one Chandrashekhar Waghel was arrested. None of them named the applicant as co-conspirator in this crime. The applicant came to be arraigned as late as on 17th October, 2020 which is quite interesting and strengthen the argument of Mr. Pasbola that only to invoke the provisions of MCOC Act, the applicant appears to have been implicated.

15. Remand reports of rest of the accused even do not show complicity of the applicant in the commission of the offence. It necessarily means that till 17th October, 2020, the Investigating Officer has no evidence against the applicant to show his involvement in this crime. It is needless to go into the aspects of prior approval and sanction by the Investigating Agency at this stage, nevertheless, what seems to have persuaded the Competent Authority, who accorded approval on 17th October, 2020 is that one of the witnesses heard about a talk between the applicant and Lakhan Dhavare as regards payment of Rs.25,000/- wherein the applicant alleged to have asked Lakhan Dhavare that he would get the amount, which appears to be quite remote and does not

appeal to one's conscious as regards involvement of the applicant.

16. Prior approval dated 17th October, 2020 finds a mention about activities of Swapnil @ Chocolate Satish Modve who has been claiming supremacy in *Budhwar Peth, Pune* in his nefarious activities and it appears that the deceased was eliminated under the impression that the said Swapnil @ Chocolate Satish Modve along with the applicant would release them from Jail. There is no material to show any nexus between the Swapnil @ Chocolate Modve and the applicant.

17. There is nothing on record to indicate that Swapnil alias Chocolate Modve and the applicant had ever communicated with each other. It appears that there is a CCTV footage within the premises of Sassoon Hospital, *Pune* depicting the applicant who was in custody of Police conversing with Swapnil alias Chocolate Modve at 3.44.50 p.m and was taken away by the Police at 3.:45:35 p.m on 25th September, 2020. The prosecution alleges that this is the material indicating a nexus between the applicant and Swapnil alias Chocolate Modve. It is unfathomable as to how within a span of 45

seconds, there can be an effective conversation between the applicant and Swapnil alias Chocolate Modve as regards a conspiracy to eliminate the deceased, that too, in the presence of Police Personnel, in whose custody the applicant was. No statement of any of the Police Personnel appears to have been recorded. There is no material even to show any conversation between the applicant with Sandip Kolte or Lakhan Dhavare.

18. As regards confessional statement under Section 18 *qua* Niranjan Mahankale dated 6th November, 2020, it appears to have been based on a hearsay evidence since, he heard a talk between Sandeep Kolte and Rahul Ragir that the applicant would help them after the plan is executed.

19. Mr. Palkar emphasized on the statement of one Ajay Yemnavva Kamble by contending that Swapnil alias Chocolate Modve had a nexus with the applicant. It seems that this witness on the basis of his personal knowledge so stated before the Police Officer and, therefore, he had an apprehension from Swapnil @ Chocolate Modve. Contention of Mr. Palkar that there is a presumption under section 22 (2) of the MCOC Act. However,

there is lack of sufficient material even to *prima facie* hold that the applicant rendered any financial assistance in executing the plan of eliminating the deceased.

20. Consequently, the applicant is entitled to be enlarged on bail in light of the discussion made hereinabove.

21. Needless to state that these are *prima facie* observations *sans* merits of the case only to the extent of considering application for bail. The trial Court shall not get influenced with the observations made hereinabove. Now, to the order.

: **ORDER** :

(a) The application is allowed.

(b) The applicant – Bapu @ Kumar Prabhakar Nayar be released on executing a P.R bond in the sum of Rs.1,00,000/- with one or two sureties in the like amount in connection with C.R. No.1094 of 2020 registered with *Faraskhana* Police Station, *Pune* to the satisfaction of the Special Judge, MCOC Court, *Pune*.

(c) The applicant shall attend the *Faraskhana* Police Station, *Pune* on every Sunday between 10.00 a.m and 12.00 p.m.

(d) The applicant shall surrender his passport to the Investigating Officer. In case, he has no passport, an affidavit be sworn before the Special Court within two weeks from today.

(e) The applicant shall not leave the jurisdiction of the Special Court until conclusion of the trial.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with the evidence.

(g) The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall also inform in case of any change in the Cell number or the residential address.

(h) Needless to say that breach of any of the condition would entitle the prosecution to pray for cancellation of the bail.

22. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]