

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

CRIMINAL APPEAL NO.1396 OF 2023

Somnath Birudev Rupnawar

....Appellant

V/s.

The State of Maharashtra and Ors.

....Respondents

**WITH
CRIMINAL APPEAL NO.298 OF 2024**

Siddhant @ Sidharth Balu Taktode

....Appellant

V/s.

The State of Maharashtra and Anr.

....Respondents

Mr. Vikas Shivarkar *for the Appellant in Appeal/ 1396/2023.*

Mr. Kuldeep U. Nikam *with Mr. Om N. Latpate and Rohit Karanjwane for the Appellant in Appeal/298/2024.*

Mr. Ashok R. Metkari, *APP for Respondent No.1.*

Mr. Mahadji Phalke *for Respondent No.2.*

Mr. Rahul V. Udage, PC, *Indapur Police Station (District-Pune), present.*

CORAM : SANDEEP V. MARNE, J.
Judgment Reserved On : 24 July 2024.
Judgment Pronounced On : 29 July 2024.

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JUDGMENT

1) Appellants in these appeals are aggrieved by orders passed by the Additional Special Judge (M.C.O.C. Act), Pune rejecting applications for bail filed by them in MCOCA Case No. 452 of 2020. Bail Application of Appellant-Somnath Birudev Rupnawar is rejected by order dated 28 December 2022 and accordingly he has filed Criminal Appeal No.1396 of 2023. Bail Application of Appellant-Siddhant @ Sidharth Balu Taktode is rejected by order dated 2 February 2024 and accordingly, he has filed Criminal Appeal No.298 of 2024. Since both Appeals arise out of same case, both appeals are heard and are being decided by this common order.

2) The prosecution story is that the Complainant is a resident of Vijaynagar, Taluka-Akluj, District -Solapur. Accused-Aakash @ Anna Rajendra Kolekar, Tushare Rajendra Kate, Somnath Birudev Rupnawar, Vikas Mahesh Shinde, Nitin @ Pappu Balu Pawar, Siddhant Nanasaheb Taktode and Rahiman @ Sultan Dilawar Bagwan are residents of same lane/area and are accused in other cases and were externed from Solapur District few days before the FIR. Deceased-Akshay Rajendra Chandanshive was Complainant's friend and accused did not like and often objected to both being together. The FIR alleges that on 14 February 2020, Complainant had visited Bhandgaon Taluka-Indapur, District-Pune alongwith his friends for lunch invite and deceased-Akshay had gone to Indapur for attending a wedding. After respective lunches, all of them left Indapur at 4 pm and were returning to Akluj on their motorcycles. When they reached Village-Sarati at 4.30 p.m. all accused arrived on three motorcycles, abused complainant and his friends and asked them to stop their motorcycles. That accused alighted from their motorcycles and that complainant saw Anna Kolekar carrying steel pipe in his hand, Tushar Kate carrying iron spanner (tommy), Somnath

Rupnawar carrying wooden log, Vikas Shinde carrying bamboo stick and others carrying wooden logs. Accused asked deceased-Akshay as to why he was seen in complainant's company and abused him. That deceased-Akshay was assaulted by Anna Kolekar with steel pipe and Tushar Kate by steel spanner (tommy) on his hands, head, legs and back. When complainant attempted to rescue the deceased, the other accused started beating him on his back, forehead and ears. Therefore, all other friends of Complainant ran away and passersby gathered at the scene. However, accused threatened them with weapons in their hands and therefore they also fled the scene. That blood started oozing out from the head of deceased-Akshay. Thereafter accused left on their motorcycles towards Indapur. Complainant and his friends brought Akshay to Akluj Police Station and Police issued a reference memo to Government Hospital-Akluj, where first-aid treatment was given by Doctor. Thereafter Complainant and his friends took the injured-Akshay for further treatment to Dr. Inamdar Hospital. While being treated in Intensive Care Unit, injured Akshay passed away at 5.00 a.m. on 15 February 2020.

3) All the 7 accused Aakash @ Anna Rajendra Kolekar (accused No.1), Tushar Rajendra Kate (accused No.2), Somnath Birudev Rupnawar (accused No.3), Vikas Mahadev Shinde (accused No.4), Nitin Balu Pawar (accused No.5), Siddhant @ Sidharth Balu Taktode (accused No.6) and Rahiman @ Sultan Dilawar Bagwan (accused No.7) were arrested. They are accordingly chargesheeted for offences under Sections 302, 323, 143, 147, 148, 149, 504 and 506 of the IPC, Sections 3(2)(v), 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act.**) and Section 3(1)(i)(ii) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (**MCOC Act**). The Appellant Somnath Birudev

Rupnawar filed application for bail under Section 439 of the Cr.P.C. on 22 September 2022. His application has been rejected by the learned Special Judge under the MCOC Act by order dated 28 December 2022. He has accordingly filed Criminal Appeal No.1396 of 2023 challenging the order dated 28 December 2022. Accused-Siddhant @ Sidharth Balu Taktode filed application for bail, which has been rejected by the learned Special Judge by order dated 2 February 2024. He has accordingly filed Criminal Appeal No.298 of 2024 challenging the order dated 2 February 2024.

4) Mr. Shivarkar, the learned counsel for the Appellant in Criminal Appeal No.1396 of 2023 (Somnath Birudev Rupnawar) would submit that complainant and eye witnesses had strong motive to implicate the Appellant on account of scuffle that had taken place on 25 January 2020 in which Complainant with his accomplices had assaulted one of the accused Nitin Pawar which is why Appellant is falsely implicated in the incident, though he was not even present at the spot when the alleged crime is committed. In support of his plea for *alibi*, reliance is placed on statement of the Appellant's sister-Shailaja Biru Rupnawar claiming that the Appellant was with her at her house at Bhekrai Nagar, Mancharwadi (Pune). Some photographs taken from CCTV footage of shop Ganesh Cloth Center are also relied upon. That several accused also belonged to scheduled caste community and therefore application of offences under SCST Act is unwarranted. That the FIR itself indicates that assault is essentially committed by accused Nos.1 and 2 and that in the FIR statement there is no allegation of Appellant assaulting the injured. That though Appellant is alleged to have been carrying wooden log in his hand, he is vaguely included in the term 'others' who allegedly assaulted complainant, but his injury

certificate is missing. That therefore the FIR itself makes it clear that the Appellant has not assaulted the deceased and therefore Appellant's acts alleged in FIR are not responsible for the death. That FIR clearly indicates that the death is caused possibly on account of delay in treatment as the injured was in a position of being taken on motorcycle first to the police station and was administered first-aid treatment at Government Hospital, Akulj and was later taken 'as per convenience' of his friends to Dr. Inamdar Hospital. Though the postmortem report shows cause of death as head injury, it is admittedly not caused by Appellant. That only one antecedent is alleged against the Appellant and in the externment order itself, it is recorded that Crime No.154 of 2019 was registered against Appellant out of misunderstanding. That the Appellant is in custody for the last four and half years and deserves to be enlarged on bail.

5) Mr. Nikam would appear on behalf of the Appellant (Siddhant @ Sidharth Balu Taktode) in Criminal Appeal No.298 of 2024 and submit that in the FIR, vague role is assigned to Appellant-Siddhant, which again is common without any specific allegation against Appellant. That FIR statement does not reflect Appellant carrying any weapon with him. So far as the injured is concerned, the role is limited only to accused Nos.1 and 2. That Appellant's role is restricted to the alleged assault on Complainant, however, it is not prosecution's case that complainant suffered any injury as injury certificate is not produced on record. That therefore even the allegation of assaulting complainant is clearly fallacious. That the Appellant did not have any motive for killing the deceased. That the *postmortem* report attributes death due to head injury, which is alleged to be caused by accused No.1 by steel pipe. That the delay in administering medical treatment clearly

indicates that no serious injury was suffered by the deceased. That Appellant's clothes are recovered, but no blood stains are found thereon and that no weapon is recovered from Appellant and only his bike is seized. As against this, tommy is recovered at the instance of accused No.2 and bamboo stick is recovered at the instance of accused No.4. That statements of the eye witnesses recorded under Section 164 of the Code shows cause of the first and second blow by accused Nos.1 and 2, which clearly correspond with the injuries indicated on forehead and hand in the *postmortem* report indicating that no injury is attributable to Appellant. That Appellant has only one antecedent, that too relating to minor offences under Sections 323 and 324 of the IPC relating to the year 2019. That Appellant himself is a member of the Scheduled Cast community and therefore he cannot be accused under any of the provisions of the SCST Act. That Appellant has spent four and half years in jail and deserves to be enlarged on bail considering the observations made by the Apex Court in *Javed Gulam Nabi Shaikh vs. State of Maharashtra and Anr.*¹ That even though appeal of co-accused-Nitin Pawar is rejected by the Division Bench of this Court and SLP filed by him is withdrawn before the Apex Court, there cannot be any negative parity in respect of the bail applications as held by this Court in *Prashant Jaideo Wasankar vs. State of Maharashtra*²

6) The Appeals are opposed by Mr. Metkari, the learned APP appearing for Respondent-State submitting that both Appellants not only have antecedents but were externed few days prior to commission of the crime. That Division Bench of this Court has already rejected the appeal

¹ Criminal Appeal No.2787 of 2024 decided on 3/7/2024.

² (2016) 4 BOMCR (CRI) 257

filed by co-accused Nitin Pawar and the Apex Court has refused to interfere in the order passed by the Division Bench. That Appellants are members of a gang and since provisions of the MCOC Act are invoked, they cannot be granted bail. Appellants being hardened criminals, are likely to commit similar offences upon being released from jail. He would pray for dismissal of both the appeals.

7) Mr. Phalke would appear on behalf of Respondent No.2-Complainant and submit that specific role has been ascribed to both Appellants in statements of Complainant and other eyewitnesses under Section 164 of the Code which clearly indicate carrying of weapons as well as assault committed by both Appellants. That wooden logs have been recovered, which were apparently used by Appellants for commission of crime. That the postmortem report would clearly indicate additional injuries on head as well as fracture in the skull. That provisions of MCOC Act are invoked and therefore twin test are required to be satisfied viz.(i) satisfaction of the Court about absence of reasonable grounds for believing that the accused is not guilty of the alleged offences and (ii) he is not likely to commit any offence while on bail as per the judgment in ***State of Maharashtra vs. Vishwnath Maranna Shetty, 2012 10 SCC 561***. He would demonstrate two previous crimes committed by all accused by acting as gang and that they were facing externment order. He would therefore submit that no case is made out for interference in the orders passed by the learned Special Judge. He would pray for dismissal of the appeals.

8) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that initially the FIR was

registered for offences punishable under Sections 143, 147, 148, 149, 302, 323, 324, 341, 504 and 506 of the IPC and Sections 3(2)(v) and 3(2)(va) of the SCST Act. However, during the course of investigations, an opinion was formed of the crime was committed by the Organised Crime Syndicate of accused No.1-Aakash @ Anna Kolekar and his gang members. Therefore, a proposal was submitted to the Competent Authority for invoking the provisions of the MCOC Act. The Competent Authority granted prior approval as contemplated under Section 23(1)(a) of the MCOC Act. At the time of submitting the charge-sheet to the Court after completion of investigations, the Sub Divisional Police Officer, Baramati Division submitted his proposal to the Competent Authority seeking sanction under Section 23(2) of the MCOCA. By order dated 3 August 2020 the Competent Authority granted sanction under Section 23(2) of the MCOC Act. This is how the prosecuting agency has submitted Final Report before the Special Court. Thus, in the final report, Sections 3(1)(i)(ii) and 3(4) of MCOC Act are also added.

9) Application for grant of bail in a case involving offences under the MCOC Act is required to be considered in the light of provisions of Sub Section (4) of Section 21 of the MCOC Act. It would be relevant to reproduce Section 21(4) of the MCOC Act, which reads thus:

21(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

- (a) the Public Prosecutor has been given an opportunity to oppose the application of such release ; and
- (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

10) In *Vishwanath Maranna Shetty* (supra) the Apex Court has held that twin conditions of (i) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offences and (ii) he is not likely to commit any offence while on bail, must be satisfied before making an order enlarging the accused on bail where offences under the provisions of the MCOCA Act are involved. The Apex Court has held in paragraphs 19, 29 and 30 as under:

19. In the earlier part of our judgment, we extracted Section 21(4) of MCOCA which bars the court from releasing the accused of an offence punishable under the said Act subject to the conditions prescribed in clauses(a) and (b) therein. We are of the view that sub-section (4) of Section 21 mandates that it is incumbent on the part of the court before granting of bail to any person accused of an offence punishable under MCOCA that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

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29. While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. 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 organized 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. In view of the above, we also reiterate that when a prosecution is for offences(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section

439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section(4) of Section 21. **Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied.** The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on “reasonable grounds”. Though the expression “reasonable grounds” has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA.

30. The analysis of the relevant provisions of MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions show that substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied. Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin sets as mentioned above while granting bail.

(emphasis added)

11) Therefore, correctness of the impugned orders passed in the present cases will have to be examined within the parameters of provisions of Section 21(4) of the MCOC Act. In the present case, the FIR indicates that all the 7 accused, who are ordinary resident of Akuj, Taluka-Malshiras, District Solapur, travelled in pursuit of the deceased and complainant at Indapur, District Pune. They intercepted deceased, Complainant and their friends at Village -Sarati and allegedly committed the crime. Though the FIR *prima facie* indicates that death of the deceased is primarily attributable to the blows given by accused No.1- Aakash @Anna Kolekar by steel pipe and by accused No.2-Tushar Rajendra Kate by still spanner (Tommy), there are specific allegations of other accused, including Appellants, also participating in the act of assaulting the Complainant, if not the deceased. It is not that

Appellants were present at the spot by chance. They have travelled with accused No.1, who is described as gang leader of Organized Crime Syndicate, along with weapons at the venue/spot where the crime has taken place. *Prima facie* therefore it appears to be a well-planned conspiracy.

12) In the present case, Appellants are accused of committing organized crimes under Section 3(1)(i)(ii) and 3(4) of the MCOC Act. Therefore, at this juncture it is not necessary to segregate the roles played by different accused in commission of crime. Therefore, all the submissions sought to be canvassed on behalf of Appellants about their alleged non-participation in giving blows to the deceased leading to his death, nature of injuries suffered by him, delay in medical treatment, etc. are totally irrelevant for the purpose of considering the issue of grant of bail under Section 21(4) of the MCOC Act. What needs to be noted is the fact of participation of Appellants in more than one offence acting as gang members alongwith the head of the Organized Crime Syndicate. This is not a case where some scuffle took place between two groups in ordinary course of things, resulting in death of the deceased. *Prima facie*, this appears to be a case of formation of common intention by all the 7 accused, in pursuit of commission of crime by travelling to the spot where the deceased and the Complainant were present with intention to kill the deceased. The objective is to create an atmosphere of terror by the gang.

13) It appears that accused No.5-Nitin Balu Pawar had filed Criminal Appeal No.740 of 2021 challenging the order of the Special Judge, rejecting bail. Division Bench of this Court has dismissed the appeal of accused-Nitin Pawar by order dated 8 December 2022 by recording following findings:

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.

14) Both Mr. Shivarkar and Mr. Nikam have relied upon order passed by the Supreme Court on 17 April 2023 in SLP (Criminal) Diary No. 10834 of 2023 filed by accused-Nitin Pawar, which reads thus:

1. Learned counsel for the petitioner seeks permission to withdraw this special leave petition with liberty to file afresh petition/application.
2. Permission is granted.
3. Hence, this special leave petition is dismissed as withdrawn with liberty as prayed for.

15) Relying on the order of the Apex Court, it is sought to be contended that since accused No.5-Nitin Pawar is granted liberty to file fresh bail application, the order passed by the Division Bench of this Court cannot be relied upon in the present case. I had occasion to deal with Criminal Appeal filed by Nitin Pawar after the order of the Supreme Court dated 17 April 2023, which was withdrawn by him after it was pointed out that fresh application for bail will have to be filed before the learned Special Judge. In

the said Criminal Appeal, a new plea was sought to be raised that accused No.5-Nitin Pawar was not present at the spot where the crime was committed by relying on some CCTV footage. The said attempt is being made by Nitin Pawar on account of observations made by the Division Bench of this Court in paragraph 7 of the order dated 8 December 2022 that '*presence of the Appellant at the scene of offence along with Akash @ Anna Rajendra Kolekar is not in dispute.*' This appears to be the reason why liberty is granted to the said accused to file a fresh bail application to demonstrate his presence at some other spot at the time of commission of the crime. Therefore, mere grant of liberty to accused No.5-Nitin Pawar by the Supreme Court for filing fresh application for bail cannot be a reason to completely ignore the order passed by the Division Bench on 8 December 2022. In fact, what is more relevant is to note that the Supreme Court did not grant bail to Nitin Pawar on 17 April 2023.

16) Both Mr. Shivarkar and Mr. Nikam have attempted to convince me that the crime has not been committed by them in Solapur District, in respect of which externment order is passed and that Village-Sarati is located in Indapur Taluka, Pune District. In my view, this aspect is totally irrelevant for deciding the present appeals so long as it is established that all the 7 accused came together with common intention, travelled from within Solapur District in pursuit of the deceased and Complainant, who had visited Indapur in Pune District in connection with their personal business and are accused of committing crime.

17) Mr. Shivarkar has relied upon some documents to demonstrate that Appellant-Somnath Rupnawar was not present at the spot of the crime at the

relevant time. Reliance is sought to be placed on statement of his sister - Shailaja Biru Rupnawar in which she has claimed that Appellant-Somnath stayed with her at Bhekrainagar, Mancharwadi, Taluka-Haveli, District-Pune and even on 14 February 2020, he was at his sister's place. Some CCTV footage is sought to be relied upon to prove his presence at a different place than the crime scene on 14 February 2020. However, presence of accused Somnath is clearly alleged in various statements of Complainant as well as witnesses. His presence at the crime scene is also confirmed in statements recorded under Section 164 of the Code by various witnesses. Therefore, at this stage I am not inclined to believe the plea of *alibi* sought to be raised by the said Appellant.

18) Mr. Nikam has relied upon judgment in ***Javed Gulam Nabi Shaikh*** (supra) in support of his contention that Appellants cannot be continued in indefinite incarceration. In my view the order in ***Javed Gulam Nabi Shaikh*** cannot be cited in support of an absolute proposition that in every case where the undertrial prisoner is in jail for more than four years, he must be enlarged on bail. Present case involves commission of offences by the Organized Crime Syndicate and therefore order in ***Javed Gulam Nabi Shaikh*** cannot be utilized for the purpose of enlarging the Appellants on bail only on the ground of their incarceration for a period exceeding four years, especially where this Court is unable to record findings that there are no grounds to believe that Appellants have not committed the offences and that they are not likely to commit offences after being released on bail.

19) After considering the overall circumstances of the case, I am unable to record *prima facie* finding that there exist reasonable grounds for

believing that Appellants are not guilty of offences alleged against them. So far as the second condition of Appellants not likely to commit any offence while on bail is concerned, it is undisputed position that Appellants have committed the crime in question within 8 days of passing of externment order. Perusal of externment order dated 6 February 2020 would indicate that the Organized Crime Syndicate had committed as many as four crimes prior to the passing of externment order. In all crimes, accused No.1-Akash @ Anna Rajendra Kolekar has acted as head of the Syndicate. Both Appellants were apparently part of the gang which is accused of committing two crimes at Serial Nos.2 and 3 of the table reflected in the externment order. The crime in question has taken place on 14 February 2020 and 8 days before commission of the crime all the 7 accused were externed from the entire Solapur District, except Solapur city, for a period of 2 years. Despite passage of the externment order, all the 7 accused came together with common intention of commission of crime and are accused of committing the crime in question. Appellants therefore appear to be hardened criminals and it is difficult to record a finding that they would not commit any crime while on bail.

20) In my view, the conditions under Section 21(4) of the MCOC Act are not fulfilled in the present case. I therefore do not find this to be a fit case for enlargement of Appellants on bail.

21) Both Appeals are devoid of merits and are accordingly dismissed.

[SANDEEP V. MARNE, J.]