

Prathamesh Chandrakant Londhe	...	Applicant
versus		
State of Maharashtra	...	Respondent

Mr. Kedar J. Patil with Mr. Pratik G. Tare, Ms. Sakshi S. Kadam, for Applicant.
Mr. A.A.Naik, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 18 NOVEMBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned along with 26 co-accused in C.R.No.244 of 2018 registered with Pandharpur City Police Station, District Solapur, for the offences punishable under Sections 120-B, 302, 303, 201, 143, 147, 148 and 149 of the Indian Penal Code, 1860 and Sections 3 and 4 read with Section 25 and Section 5 read with Section 27 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act), has preferred this application to enlarge him on bail.
3. Briefly stated the prosecution case runs as under :
 - 3.1 Gopal Bajirao Ankushrao (A18) is the leader of an organized crime syndicate styled as 'Sirji'. Gopal Ankushrao (A18) and his associates have created a reign of terror in and around Pandharpur city. Grave offences of

murder, attempt to commit murder, kidnapping for ransom extortion and causing grievous hurt are committed by the members of 'Sirji' gang.

3.2 Sandip Pawar (deceased), the son of the first informant, was a Councillor of Pandharpur Municil Council. The deceased resisted illegal and unlawful activities of Sirji Gang. Resultantly, the clout of Gopal (A18) and 'Sirji' gang was waning. Gopal (A18) and the members of his gang thus had a grudge against the deceased.

3.3 The prosecution alleges that actuated by diverse motives to eliminate the deceased, on 16 December 2017, initially accused Gopal (A18), Shital @ Vikas @ Vicky More (A5), Sandip Adhatrao (A6) and Sunil Wagh (A25) hatched a conspiracy to commit murder of the deceased. Dada Ghasani @ Piraji Lagade (A20), Digambar @ Diga Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23) and Bablu Shinde (A27) were drafted in as confederates in the said conspiracy. Deadly weapons and masks were provided to the assailants.

3.4 In pursuance of the said conspiracy, on 18 March 2018 while the deceased was having tea at Hotel Shriram Bhojnalaya, Station Road, Pandharpur, Akshay Surwase (A1), Manoj Shirsikar (A3), Sandip Adhatrao (A6), Onkar Jadhav (A11), Rais Khan (A14), Vishal Pawar (A16), Dada @ Pirji Lagade (A20), Digambar Janrao (A21), Shahrukh Shaikh (A22), Eknath Shinde (A23), Bablu Ramdas Shinde (absconding A27), Sonu Pukale (A13)

and Sagar @ Khandu Bansode (A24), came thereat on the motorcycles. They barged into Hotel Shriram Bhojnalaya. Sandip (A6), Onkar (A11), Digambar (A21), Bablu (A27) were armed with pistols. They shot at the deceased. Akshay (A1), Manoj (A3), Rais Khan (A14), Dada @ Pirji (A20) and Sagar (A24) gave blows by means of the scythes on the head, face, hands, chest and ears of the deceased in quick succession.

4. Qua the applicant, it is alleged that the applicant is a member of 'Sirji' gang. On 17 March 2018, the applicant had accompanied Akshay (A1) to Pandharpur. A plan to eliminate the deceased was discussed by Akshay (A1) with the applicant and other co-accused on that night at the place of overnight stay, which was arranged by Pundalik S. Wanare (A2). On the day of occurrence, after the co-accused killed the deceased by means of deadly weapons, the applicant helped co-accused escape in the Scorpio vehicle, bearing Registration No.MH-06/AN-1528.

5. Mr. Kedar Patil, learned Counsel for the Applicant, submitted that the applicant has been roped in as a conspirator in the alleged conspiracy to commit murder of the deceased sans any legal evidence. It is not the prosecution case that the applicant was one of the assailants who had hatched the conspiracy and assaulted the deceased by means of deadly weapons. The only role attributed to the applicant is that he had accompanied Akshay (A1) in the Scorpio vehicle much prior to the occurrence to

Pandharpur and on the day of occurrence, after the alleged incident of assault, co-accused went away with the applicant in the said vehicle.

6. Mr. Patil further submitted that the aforesaid role emerges from the memorandum of disclosure statement by the accused Akshay (A1) and Manoj Shrisikar (A3). The statement made by one co-accused under Section 27 of the Indian Evidence Act, 1872 is not admissible qua another accused. No other material is pressed into service which incriminates the applicant. Mr. Patil further submitted that there is nothing to indicate that the applicant is a member of the organized crime syndicate led by Gopal Ankushrao (A18). The applicant has no antecedents. The applicant has been in custody for more than six and half years. Charge has yet not been framed. The trial will take a long time. Therefore, the applicant deserves to be enlarged on bail.

7. In opposition to this, Mr. Naik, learned APP, stoutly resisted the prayer for bail. It was submitted that the applicant was a co-conspirator. Accusation against the applicant and co-accused are grave. The deceased was killed in a broad-day light by the co-accused who were armed with deadly weapons. The material on record indicates that the deceased was killed in pursuance of a well-planned conspiracy, in which the applicant was a confederate. At this stage, according to the learned APP, the statements of the co-accused recorded under Section 27 of the Indian Evidence Act, 1872, can be looked into, to ascertain the role of the Applicant. Akshay (A1) and Manoj (A3) have

categorically stated that the applicant was present when the plan was discussed by Akshay (A1), and the applicant assisted the co-accused in fleeing away after the occurrence. Therefore, the applicant does not deserve to be enlarged on bail.

8. I have perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. Learned Counsel took the Court through the memorandum of disclosure statements of Akshay (A1) and Manoj (A3) and the orders passed by this Court in BA No.3119 of 2023 and BA No.11 of 2021 whereby this Court had released co-accused Akshay Hanumant Burade and Rupesh Survase on bail and rejected the bail application of Sachin Suresh Devmare (A26).

9. To start with, the material against the applicant is required to be appraised in two parts. First, whether the applicant was a member of the organized crime syndicate led by Gopal (A18), which in itself is an offence punishable under MCOC Act. Second, whether the applicant was allegedly a conspirator in the conspiracy to commit organized crime and/or facilitated the commission of the organized crime, and, harboured the other members of the organized crime syndicate.

10. On the first count, the thrust of the submission on behalf of the Applicant was that there is nothing to indicate that the applicant was a member of the organized crime syndicate. There is no element of

commonality in the offences as the applicant has no antecedents at all.

11. It is trite law that each member of the organized crime syndicate must not have been chargesheeted for the offence punishable for more than three years imprisonment. If it could be shown that the members of the organized crime syndicate indulged in continuing unlawful activity, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, the offence of organized crime as envisaged by MCOC Act, can be said to have been made out. Continuing unlawful activity is qua the organized crime syndicate and not each member. The nexus between the individual accused and the organized crime syndicate is important. To ascertain the existence of such nexus, the role attributed to the particular accused and the antecedents assume significance.

12. As noted above, and in the affidavit in reply, the prosecution primarily banks upon the disclosure statements of Akshay (A1) and Manoj (A3) to bolster up its case that the applicant was a co-conspirator. In the said disclosure statements (discounting the aspect of admissibility thereof qua the applicant), the role attributed to the applicant is that on 17 March 2018, the applicant, Akshay (A3) and another co-accused Sonu @ Omkar (A13) had come to Pandharpur from Sangli. Another team of assailants/co-accused joined them. They stayed overnight. On the next day, the assailants assaulted the deceased. After the occurrence, co-accused Akshay (A1),

Sonu @ Onkar Pukale (A13) and others joined the applicant and they went away in the Scorpio car.

13. Prima facie, it appears that apart from the aforesaid disclosure statements, there is no other material to establish the nexus between the applicant and the crime, or for that matter, the organized crime syndicate. The prosecution does not allege that the applicant was one of the assailants who assaulted the deceased. The role attributed to the applicant primarily appears to be that of assessor before the fact and assessor after the fact. It is also imperative to note that the prosecution does not claim that the applicant was named in the confessional statements made by three co-accused namely Bandu @ Nitin (A18), Dada @ Piraji (A20) and Digamber @ Diga (A21) under Section 18 of the MCOC Act.

14. In the backdrop of the aforesaid material, prima facie, it appears that the prosecution case qua the applicant hinges on the discovery made by the co-accused under Section 27 of the Evidence Act. It is well recognized that the disclosure statement made by one accused under Section 27 of the Evidence Act, is not a legal piece of evidence qua the non-maker co-accused. An accused, who does not make the discovery cannot be fastened with the liability on account of the discovery made by the co-accused implicating the former.

15. Secondly, even if the memorandums of the disclosure statement made

by the co-accused Akshay (A1) and Manoj (A3) are taken at par, the admissibility of a large part of the said statements in evidence becomes a matter for adjudication at the trial as the historical facts narrated by Akshay (A1) and Manoj (A3) cannot be said to be prima facie distinctly related to the facts discovered pursuant to those disclosure statements. In the absence of any other material, including the confessional statements which are admissible under Section 18 of the MCOC Act, 1999, the disclosure statements made by the co-accused, prima facie, do not appear to be sturdy enough to bear the weight of the accusation that the applicant was a co-conspirator.

16. At this stage, the fact that the applicant has no antecedents assumes critical salience. In the affidavit in reply, especially, in the chart of the cases registered against the gang leader, the applicant has not been shown to be a co-accused in any of the crimes, except the present one. It is true, conspiracies are hatched in secrecy. Direct evidence of conspiracy is rarely available. However, there ought to be prima facie legally admissible evidence to show that the applicant is a co-conspirator, and/or a member of the organized crime syndicate. In the absence thereof, a prima facie case for exercise of discretion in favour of the applicant can be said to have been made out as the Court may draw an inference that, prima facie, there is no legal evidence on the basis of which the prosecution may succeed in

establishing the guilt of the applicant. Since the applicant has no antecedents, the Court may draw a further inference that the applicant may not indulge in identical activity for which he has been arranged in this case. Thus, the twin test envisaged under Section 21(4) of the MCOC Act, can be said to have been satisfied.

17. Even otherwise, the applicant has been in custody since six and half years. Having regard to the number of accused, the number of witnesses and the evidence which the prosecution may be required to adduce at the trial, it is extremely unlikely that the trial can be concluded within a reasonable period. The applicant has already undergone more than minimum sentence prescribed under Sections 3(2), 3(3) and 3(4) of the MCOC Act. Long period of incarceration without a real prospect of the trial impinges upon the right to speedy trial guaranteed under Article 21 of the Constitution of India. In such a situation, the statutory restrictions, like the one under Sections 21(4) of the MCOC Act, melt down.

18. I am, therefore, inclined to exercise discretion in favour of the applicant.

19. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Prathamesh Chandrakant Londhe be released on bail in C.R.No.244 of 2018 registered with Pandharpur City Police Station on

furnishing a PR bond in the sum of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at Pandharpur City Police Station on first Monday of every month between 10 am to 12 noon for a period of one year, from the date of his release, and, thereafter, on the first Monday of July, August, September and October of each year till the conclusion of the trial.

(iv) The applicant shall not tamper with the prosecution evidence. 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.

(v) The applicant shall not contact any of the co-accused and indulge in the activities identical to the one for which he has been arraigned in this case.

(vi) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the

entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)