

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2164 OF 2022

Rahul Ananda Kamble & Anr.Applicants
Versus
The State of MaharashtraRespondent

WITH
INTERVENTION APPLICATION NO. 4644 OF 2022
IN
CRIMINAL BAIL APPLICATION NO.2164 OF 2022

Jayshree Rajesh KanabarApplicant
In the matter between
Rahul Ananda Kamble & Anr.Applicants
Versus
The State of MaharashtraRespondent

Mr. Niranjan Mundargi i/b. Mr. Satyam Nimbalkar a/w. Shubham Bandal
for the Applicants.
Ms. Aruna S. Pai, PP a/w. Mr. Amit Palkar, APP for the State.
Mr. Mohan Rao, Advocate for Intervenor in IA/4644/2022.

CORAM : G. A. SANAP, J.

DATE : 6th NOVEMBER, 2023.

P.C. :

01] The applicants, who are accused Nos.1 and 2 in MCOCA Case No.274/2021 arising out of Crime No.413/2020, registered with Bundgarden Police Station, Pune for the offences punishable under Sections 302, 120B, 201, 212 of the Indian Penal Code, 1860 (for short "IPC"), and

Section 3/25 of the Arms Act, 1959 and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, 1951 and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short “MCOC Act”), have made this application for bail.

02] On the report of Vishwas Dayanand Gangavane dated 5th October, 2020, the crime was registered. Vishwas Gangavane was working as a driver with the deceased Rajesh Haridas Kanabar. It is the case of prosecution that there was dispute between the family of accused Nos.1 and 2 and the deceased since 2009 in respect of a land bearing Gat No.348, situated at Bavdhan, Pune. The predecessor of accused Nos.1 and 2 and the members of Kamble family somewhere in the year 1989 had executed an agreement in respect of the said land in favour of Om Waghjaie Construction, which was run by deceased Rajesh Kanabar. It is the case of prosecution that in the year 2007, accused Nos.1 and 2 through their constituted attorney Parshuram Nizsure had sold the land to Samrudhi Enterprises. Similarly, the uncle of accused Nos.1 and 2 had also sold his share in the said land to Samrudhi Enterprises. Deceased Rajesh Kanabar had filed a civil suit challenging execution of sale-deed and for injunction. The suit was pending in the Civil Court at Pune.

03] It is the case of prosecution that the dispute gave rise to revenue

proceedings. The mutation entry of the disputed land taken in the name of Kamble family was cancelled in the appeal and therefore, the proceeding was pending before the Additional Collector at Pune. It is the case of prosecution that accused Nos.1 and 2 in order to take care of their legal matter and other issues related to this property had appointed accused No.3 as their agent. Accused No.3 was, therefore, dealing with the deceased and others. He was also looking after the litigation. It is the case of prosecution that there were attempts/meetings for amicable settlement of the dispute between the accused Nos.1 and 2 represented by accused No.3 and the deceased. The said meeting was attended by witnesses Rahul Patil and Amol Chavan and others. It is stated that the settlement was arrived at. However, accused Nos.1 and 3 were under impression that deceased was not favourably responding to such settlement.

04] On 5th October, 2020, the appeal arising out of revenue proceeding was listed before the Collector at Pune. Accused Nos.1, 2 and 3 attended the Office of the Collector for the said matter. Similarly, the deceased also attended the Office of the Collector for the said matter. It is the case of prosecution that after attending the Office of the Collector, the deceased came out of the Office and was purchasing fruits near the gate of State Bank of India at about 2.45 p.m. It is stated that at that time accused

No.4 - Hasmukh Patel shot the deceased by a country made pistol. This incident was witnessed by the informant. The deceased was carried to the hospital by the informant, where he was declared dead. On the report of the informant, the offence was registered.

05] It is seen on perusal of the record that initially the provisions of MCOC Act were not invoked and the charge-sheet was filed. It is further seen that the Investigating Officer after obtaining the approval of the Competent Officer filed a supplementary charge-sheet on 3rd April, 2021, invoking the provisions of MCOC Act against the accused persons. It is the case of prosecution that the applicants and the co-accused, being the members of the Organized Crime Syndicate of which accused No.4 - Hasmukh Patel is a gang leader, had hatched the conspiracy and killed Rajesh Kanabar out of the property dispute. The object of his killing was to cause unlawful gains to the syndicate.

06] Accused Nos.1, 2 and 3 were arrested in the crime on the allegation that they were part of the conspiracy. It is also the case of prosecution that they are the members of the Organized Crime Syndicate. According to the accused, they have not committed any crime. It is their case that they were not the members of any Organized Crime Syndicate and particularly Crime Syndicate of accused No.4. According to them, the

provisions of MCOC Act could not have been invoked against them. It is stated that just to deny bail to them, the provisions have been invoked against them.

07] I have heard learned advocate for the applicants/accused, learned PP for the State and learned advocate for the intervenor. Perused the record and proceedings.

08] Learned advocate for the accused submitted that these accused Nos.1 and 2 were neither the members of any Organized Crime Syndicate nor they have criminal antecedents. Learned advocate submitted that the prosecution has not collected direct or indirect evidence against the accused Nos.1 and 2, to show their complicity in the commission of crime. Learned advocate submitted that only because of the pending property dispute between the accused Nos.1 and 2 and the deceased, on suspicion they have been made to face this prosecution. It is pointed out that the motive alone cannot take place of proof or evidence. Learned advocate submitted that considering the fact that the accused Nos.1 and 2 were not well-versed with the litigation and other aspects, they had availed the services of accused No.3, to take care of their property dispute. Learned advocate pointed out that the material on record indicates that accused No.3 was attending the legal proceedings and dealing directly with the deceased. Learned advocate

further pointed out that there is no iota of evidence to show that accused Nos.1 and 2 were in contact directly, indirectly or on phone with the remaining accused. Learned advocate submitted that accused Nos.1 and 2 were bound to be in touch with or in contact with accused No.3 and therefore, inference of their involvement in crime cannot be drawn. Learned advocate further submitted that since 2009, accused Nos.1 and 2 were pursuing their dispute. Learned advocate submitted that accused No.3, who was in contact with the other accused persons, has been granted bail by this Court (Coram : C.V. Bhadang, J.) and therefore, on the ground of party, accused Nos.1 and 2 are entitled to get bail. Learned advocate submitted that on the contrary, the case of accused Nos.1 and 2 is on better footing than the case of accused No.3. Learned advocate submitted that there is no iota of evidence to suggest that they were part of any conspiracy to eliminate the deceased. Learned advocate submitted that no specific role has been attributed in the actual commission of crime to them. Learned advocate pointed out that accused Nos.1 and 2 for the purpose of attending the case listed before the Collector on the given date, they were present in the Court and therefore, simply because of their presence, they cannot be said to be part of any conspiracy. Learned advocate further submitted that accused Nos.1 and 2 have no criminal antecedents, much less any commonality of

the offences with the alleged gang leader or any other co-accused. It is, therefore, submitted that in the case of accused Nos.1 and 2 the rigors of Section 21(4) of the said Act, would not get attracted. In order to seek support to this submission, he has relied upon a decision of the Hon'ble Apex Court in the case of *Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat [2022 LiveLaw (SC) 538]*.

09] Learned PP submitted that accused Nos.1 and 2 had strong motive to eliminate the deceased, inasmuch as the deceased was not ready to settle the dispute and pay the money to the accused. Learned PP submitted that the CDR of accused Nos.1 and 2 indicates that they were in constant touch with the accused No.3 before and after the commission of crime. Learned PP further pointed out that on the given date, they were seen in the CCTV footage at the Office of the Collector at Pune. Learned PP submitted that the statement of Rahul Dagade shows that at the instance of accused Nos.1 and 2, accused No.3 had demanded Rs.10 crores from the deceased for settlement of the dispute. Learned PP further pointed out that in order to teach lesson to the deceased, the conspiracy was hatched and pursuant to the conspiracy, the Crime Syndicate of accused No.4 was contacted and with the help of Crime Syndicate, the deceased was eliminated. Learned PP submitted that there is ample evidence direct and circumstantial to indicate the

complicity of accused Nos.1 and 2 in the crime. Learned PP submitted that the offence committed is serious and therefore, accused Nos.1 and 2 are not entitled to get bail. Learned PP further submitted that the provisions of MCOC Act have been rightly invoked against the accused Nos.1 and 2, because they were part of the Crime Syndicate in this crime. Learned PP submitted that the involvement in such a crime with the Crime Syndicate is sufficient to invoke the provisions of MCOC Act. In order to substantiate this submission, learned PP has placed heavy reliance on the following decisions:-

1. *Govind Sakharam Ubhe Vs. State of Maharashtra [2009 ALL MR (Cri.) 1903].*
2. *Abhishek Vs. State of Maharashtra and Others [AIR 2022 SC 2488].*
3. *Kavitha Lankesh Vs. State of Karnataka and Others [(2022) 12 SCC 753].*
4. *State of Maharashtra Vs. Vishwanath Maranna Shetty [(2012) 10 SCC 561].*

10] Learned advocate appearing for the informant/intervenor adopted the submissions advanced by learned PP. Besides, learned advocate submitted that before occurrence of this incident of murder, 15 to 20 meetings were held. Learned advocate submitted that one call was made by accused Rahul Kamble on 7th August, 2020 to Rajesh Salunkhe, who is the member of Crime Syndicate. Learned advocate submitted that if accused

Nos.1 and 2 are released on bail, they would tamper with the prosecution evidence as well as threaten the prosecution witnesses.

11] In order to appreciate the rival submissions, I have gone through the record and proceedings. It is undisputed that the dispute with regard to the land of Kamble family was pending between accused Nos.1 and 2 and the deceased since 2009. It appears that accused Nos.1 and 2 for 10 years were taking recourse to the available legal remedy. It is seen that accused Nos.1 and 2 are from the farmers family. It is further seen that accused Nos.1 and 2 considering their position and background appointed accused No.3 to look after their litigation and property related dispute. It is seen on perusal of the record that accused Nos.1 and 2 did not directly or indirectly deal with the deceased at any point of time. Accused Nos.1 and 2 had given this responsibility to accused No.3. The record reveals that accused No.3, in order to sort out the dispute with the deceased, arranged various meetings. It is seen that in the meeting, Rahul Dagade was present wherein demand of Rs.10 crores was made. Accused Nos.1 and 2 were not present. This fact has been categorically stated by accused No.3 in his memorandum statement. The evidence on record would further show that the deceased had settled the dispute with the accused Nos.1 and 2 and the members of Kamble family. The chart compiled in the charge-sheet of the amount to be paid to the

members of Kamble family is part of record. It has come on record that accused No.3, after the settlement, came to know that he would not get any money in the said settlement.

12] It is true that on account of the pending property dispute between the accused Nos.1 and 2 and the deceased, there was motive. The motive cannot alone take place of proof or evidence. While appreciating the submissions advanced by learned advocate for the accused, pressing the ground of parity, all these facts are required to be taken into consideration. It is to be noted that accused No.3 was looking after the pending litigation of accused Nos.1 and 2. Similarly, the CDR placed on record clearly indicates that he was in direct contact with the main accused. There is no evidence even to suggest that accused Nos.1 and 2 were directly or indirectly in contact with the gang leader accused No.4. It is pointed out that accused Rahul Kamble had once made a phone call to accused Rajesh Salunkhe. It is undisputed that accused Nos.1, 2 and 3 had attended the Office of the Collector for the purpose of the case. Similarly, the deceased had also attended the Office of the Collector for attending the said case. It is not the case of prosecution that before the actual incident of shooting of the deceased by accused No.4, there was any quarrel or any dispute between accused Nos.1, 2 and 3 on one hand and the deceased on the other hand.

The presence of accused Nos.1, 2 and 3 in the Office of the Collector was for the purpose of the case. It is seen that in the incident of shooting, no role was played by accused Nos.1, 2 and 3. It is seen that the witnesses, whose statements have been recorded by the Investigating Officer, have not attributed any specific role or overt act to the accused Nos.1 and 2 at any time.

13] It is to be noted that the above circumstances and the facts need to be borne-in-mind for the limited purpose of deciding the bail application made by accused Nos.1 and 2. I am conscious of the fact that while deciding the bail application, merits of the matter and the credibility of the available evidence cannot be gone into. However, for the purpose of appreciating the submissions, the material on record has to be considered and analysed for limited purpose. Accused Nos.1 and 2 are claiming parity with the accused No.3. In my considered opinion, the ground of parity is available to the accused Nos.1 and 2.

14] Perusal of the evidence indicates that accused No.3 was directly in contact with the gang leader and other members of the Crime Syndicate. Accused Nos.1 and 2 were not at all in their contact. Accused No.3 was appointed as an agent by accused Nos.1 and 2 to take care of their litigation and to look after their interest. It is seen that the role played by accused

No.3 was direct role. Accused No.3, who has played direct role, has been granted bail by this Court. It is seen that the material compiled in the charge-sheet against the accused Nos.1, 2 and 3 is more or less identical. It is, therefore, seen that the accused Nos.1 and 2 in the teeth of the evidence compiled in the charge-sheet and on the basis of the ground of parity, cannot be denied bail.

15] The next important aspect is with regard to the criminal antecedents of accused Nos.1 and 2. It is not the case of prosecution that before commission of this crime, accused Nos.1 and 2 had committed common offences with the alleged gang leader or any other co-accused. It is seen that accused Nos.1 and 2 have no criminal antecedents. After the involvement of the accused No.4 and others came into force, the provisions of MCOC Act have been invoked.

16] At this stage, it would be appropriate to consider the law laid down by the Hon'ble Apex Court in the case of ***Mohamad Iliyas Mohamad Bilal Kapadiya*** (supra). It is held in this case that the commonality of the offences with the Crime Syndicate or gang leader is necessary to invoke the provisions of MCOC Act. It is held that for the purpose of deciding the bail application, the commonality of the offences with the gang leader needs to be considered.

17] Learned PP relying upon the decisions in the cases of ***Govind Sakharam Ubhe*** (supra), ***Abhishek*** (supra), ***Kavitha Lankesh*** (supra) and ***State of Maharashtra Vs. Vishwanath Maranna Shetty*** (supra), submitted that the involvement of the accused in the solitary crime with the Crime Syndicate is sufficient to invoke the provisions of MCOC Act and as such for the purpose of invocation of the rigors of Section 21(4) of the said Act. Learned PP submitted that the commonality of the offences with the Crime Syndicate or gang leader is not necessary.

18] I have minutely perused those decisions. In the case of ***Govind Sakharam Ubhe*** (supra), it is held that what is important is the nexus or the link of the person with Organized Crime Syndicate. The link with the ‘Organized Crime Syndicate, is the crux of the term ‘continuing unlawful activity’. If this link is not established, that person cannot be roped in. It is held that the requirement of one or more charge-sheet is qua the unlawful activities of the Organized Crime Syndicate and not qua individual member thereof.

19] In the case of ***Abhishek*** (supra), it is observed that the provisions of the Act are needed to be strictly construed for their application, an unlawful activity has to fall within the periphery of organized crime. If this condition is not fulfilled, then mere use of the expressions of the Statue in

the sanction order would have no effect.

20] In the case of ***Kavitha Lankesh*** (supra), it is held that the person can be proceeded under the 2000 Act, if the material collected by the Investigating Agency reveals that he had nexus with the accused, who is a member of the Organized Crime Syndicate or such nexus is related to the offence in the nature of organized crime. He need not be a person, who had direct role in the commission of an organized crime as such.

21] In the case of ***State of Maharashtra Vs. Vishwanath Maranna Shetty*** (supra), it is held that while considering the bail application 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 the accused possessed of the requisite *mens rea*. It is held that the mandatory provision has to be strictly construed and given full effect to.

22] In my view, in the facts and circumstances, the above decisions are not applicable to the case of the accused at this stage. It is undisputed that accused Nos.1, 2 and 3 had no connection with the gang leader or Crime Syndicate. There is no commonality of the offences under the MCOC

Act or under any other Act with the Crime Syndicate. Accused Nos.1 and 2 have no criminal antecedents. No crime was registered against them earlier under the MCOC Act. In my view, therefore, the decisions relied upon by learned PP are not applicable to this case on facts.

23] It is to be noted that while deciding the bail application, the Court has to balance the liberty of the accused as well as the interest of the victim. It is true that the deceased was brutally killed by accused No.4. The prosecution would be required to prove the involvement of the accused Nos.1 and 2 by leading evidence. While deciding their bail application, the bird's eye view of the evidence in my view would indicate that the bail cannot be denied to them. Accused Nos.1 and 2 are entitled to get bail on the ground of parity with the accused No.3, whose role in my opinion is direct and more serious. Therefore, I conclude that the ground of parity is in their favour. No material has been pointed out by the prosecution to deny the parity to the accused Nos.1 and 2 with accused No.3.

24] Learned PP and learned advocate for the informant/intervenor submitted that if the accused are released on bail, then they would threaten and pressurize the witnesses. It is submitted that considering the vulnerability of the prosecution witnesses, their release would cause severe damage to the case of prosecution. In my view, solely on the basis of this

apprehension, bail cannot be denied to the accused. In my view, this apprehension can be taken care of by imposing appropriate conditions.

Hence, I pass following order:

ORDER

- (i) The application is **allowed**.
- (ii) Applicant No.1 – Rahul Ananda Kamble and Applicant No.2 – Rupesh Ananda Kamble be released on bail in Crime No.413/2020, registered with Bundgarden Police Station, Pune on their furnishing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) each and one or two solvent sureties in the like amount.
- (iii) Applicants shall not directly or indirectly threaten, induce or pressurize the prosecution witnesses.
- (iv) Applicants shall not tamper with the prosecution evidence.
- (v) Applicants shall not enter the area of Pune District till completion of trial, except for the purpose of attending the trial on the given date and that too with prior intimation to Bundgarden Police Station.
- (vi) Applicants shall provide to the In-charge of the Bundgarden Police Station their mobile numbers as well as their place of stay during this period.

25] The application is disposed of accordingly.

26] In view of the disposal of the bail application, Intervention Application No.4644/2022 stands disposed of.

(G. A. SANAP, J.)

LATER ON

01] The learned PP submits that, the State would like to take a recourse to the available remedy against the order of the bail granted to the accused Nos.1 and 2. The learned PP submits that for the period of four weeks the operation of the order be stayed.

02] The learned advocate for the accused Nos.1 and 2 opposed this prayer contending that this Court has found the accused Nos.1 and 2 entitled to get bail. It is submitted that, their release may not defeat or frustrate the purpose of proceeding proposed to be adopted by the State. The learned advocate submits that, the question of liberty of the accused Nos.1 and 2 is involved.

03] I have given my thoughtful consideration, to the submissions. On merits, the accused Nos.1 and 2, for the reasons

recorded in the order, are found entitled to get the bail. It is true that, the State has right to take a recourse to the available/appropriate remedy against this order. It is pertinent to mention that the right to challenge the order may not get defeated or frustrated if the prayer for stay is rejected.

04] The further consequences depending upon the challenge and the ultimate result of the matter would follow in accordance with law. In the facts and circumstances, therefore, the prayer for stay is rejected. It is pertinent to note that in order to safeguard the interest of the prosecution, appropriate conditions have been imposed by the Court.

05] Authenticated copy of the order be provided to the learned PP.

(G. A. SANAP, J.)