

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

32 CRIMINAL APPLICATION NO. 3523 OF 2016

**LAXMAN @ BALRAJ S/O RAMKISAN
BHOSALE**

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.A.Gaikwad, Advocate for Applicant.

Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 14th SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 1/2011 registered at Kundalwadi police station, Dist. Nanded for the offences punishable u/ss 3(1)(2), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 [For short, 'MCOCA Act'], by this application is seeking his release on bail.

2. Heard learned counsel for the applicant. He argued that 4 accused persons in this crime, whose role is larger than the role attributed to the present applicant, are already released on bail by this Court. The learned counsel further argued that without any substantive offences, the

accused persons are booked for the offences punishable under the provisions of the MCOC Act, which is not permissible. He further submits that the applicant is entitled for similar treatment as meted out to the other accused persons.

3. Learned A.P.P. opposed the application by contending that the earlier application moved by the present applicant was withdrawn. Learned A.P.P. is not disputing the fact that the offences alleged are the offences simplicitor under the provisions of the MCOC Act without the substantive offence under the provisions of the Indian Penal Code, etc.

4. Perused F.I.R. lodged by Chandrakant Govindrao Gungewad, A.P.I. Perusal of the F.I.R. goes to show that the crime in question is registered against the accused persons only after considering their alleged involvement in other offence and filing of more than one charge sheet against them in the past.

5. On earlier occasion, the applicant/accused has applied for bail vide Criminal Application No. 5659 of 2014, but the same was withdrawn on 24/02/2015. The learned counsel for the applicant has rightly relied on para No. 2 of the Judgment of the Supreme Court in the matter of **Babu Singh and others Vs. The State of Uttar Pradesh reported in AIR 1978 – SC – 527**, which reads as under.

“ Briefly we will state the facts pertinent to the present petition and prayer and proceed

thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977, but an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set atore by this circumstance, we can not accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not overturing an earlier negation. In this view, we entertain the application and evaluate the merits pro and con.”

6. The learned counsel for the applicant submitted that there are substantial changes in the circumstances because of releasing the main accused persons on bail by this Court as well as by the learned trial Court. He further argued that the case of the present applicant is on better footing and the rule of parity applies to his case.

7. It is seen from the F.I.R. that there is no averment about any substantive offence in the F.I.R. Only filing of charge sheets against the present applicant in past is

considered and the F.I.R. is lodged against the present applicant as well as other accused persons. It is necessary for the prosecution to prove continuing unlawful activity for booking the accused persons under the provisions of MCOC Act. It is required to be shown that the accused are indulged into the activities prohibited by law, which is cognizable offence punishable with imprisonment for more than 3 years. In the case in hand, apart from the offences registered in past, no offence which is cognizable in nature punishable with imprisonment for 3 years is shown to have been committed by the present applicant and the co-accused.

8. That apart, co-accused Sarjya Niluba Chavan, Raju Niluba Chavan and Shankar @ Santosh @ Maruti @ Gulab s/o Niluba @ Nilya Chavan and Irba Gangaram Chavan are already released on bail by this Court. The case of the present applicant is at par with these accused persons. This is particularly so because the applicant is booked only under the provisions of the MCOC Act with no substantive offence under the provisions of the Indian Penal Code. The applicant is behind bars since last about 5 years. Reliance is rightly placed by the learned counsel for the applicant on the Judgment of this Court in the case of Sk. Mahmood Sk. Mahboob Vs. The State of Maharashtra reported in 2015. ALL MR (Cri.) - 3124 to submit that as the applicant is booked only under the provisions of the MCOC Act, there are reasonable grounds for believing that he is not guilty for the offences under the provisions of the MCOC Act.

9. In this view of the matter, by applying rule of parity, the applicant also deserves the same treatment as is given to the co-accused. Hence, the following order.

(i) The application is allowed.

(ii) Applicant Laxman @ Balraj s/o Ramkisan Bhosale in Crime No. 1/2011 registered at Kundalwadi police station, Dist. Nanded for the offences punishable u/ss 3(1)(2), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 be released on bail on executing P.R. Bond of ₹ 25,000/- [Rupees Twenty Five Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

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

(v) The applicant shall co-operate the trial Court in expeditious disposal of the trial against him.

[A.M.BADAR, J.]