

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

Criminal Application No. 4249 of 2016

District : Nanded

Gopi @ Guppi Gurmeet Sing
s/o. Jogindarsing Gadiwale,
Age : 23 years,
Occupation : Business,
R/o. Near Gayatri Temple,
new bridge, Nanded.

.. Applicant.

versus

The State of Maharashtra,
through Police Inspector,
Vazirabad, Nanded.

.. Respondent.

.....

Mr. Satish A. Gaikwad, Advocate, for the applicant.

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for the
respondent.*

.....

CORAM : A.M. BADAR, J.

DATE : 17TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. I-3014/2010 registered with Vazirabad Police Station, District Nanded, for offences punishable under Sections 3(1)(2), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 [**For short, "MCOC Act"**], by this application, is seeking his

release on bail during pendency of the trial.

2. Heard the learned Counsel appearing for the applicant / accused. He drew my attention to the order dated 20th March 2015, passed by this Court in Criminal Application No. 6408 of 2014, and submitted that on earlier occasion, without making any submission on merit, the application for bail was withdrawn and therefore the present application is maintainable.

3. On merit, the learned Counsel for the applicant argued that perusal of the FIR goes to show that without there being any substantive offence under the Indian Penal Code, only by taking past record in consideration, the Police Inspector of Vazirabad Police Station, Nanded, lodged the FIR on 17.04.2010 leading into registration of the crime in question. The learned Counsel for the applicant therefore argues that the applicant has made out a case for grant of bail.

4. The learned Addl. Public Prosecutor argued that the crime in question was registered on the basis of past record of the present applicant and as the Police Inspector found that the applicant is a member of organized crime syndicate indulging in commission of various offences.

5. I have carefully considered rival submissions and also perused the record made available including the FIR. It is seen from the FIR that there is no averment about commission of any substantive offence under the Indian Penal Code or any other penal law. Only filing of charge-sheets against the present applicant and other accused persons was considered by the informant - Police Inspector and accordingly the crime in question came to be registered under various provisions of the MCOC Act.

6. It is necessary for the prosecution to prove continuing criminal activity for booking the accused under the MCOC Act. It is required to be shown that the accused are indulging into the activities prohibited by law which is cognizable offence punishable with imprisonment for more than three years. In the case in hand, apart from offences registered in the past, no offence which is cognizable in nature punishable with imprisonment for more than three years is shown to have been committed by either the applicant or co-accused in this case.

7. The learned Counsel for the applicant has rightly placed reliance on judgment of this Court in the case of Sk. Mahmood Sk. Mahboob Vs. The State of Maharashtra [2015 ALL MR (Cri.) 3124] to submit that as the applicant is booked only under the provisions

of the MCOC Act, there are no reasonable grounds for believing that he is guilty of the offence punishable under the MCOC Act. This position about non-registration of substantive offence is not in dispute. Therefore, in my opinion, further pre-trial detention of the present applicant is not warranted.

8. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, be released on bail on his executing P.R. Bond in the sum of Rs. 25,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant shall abide by the following directives :-

(i) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(ii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in

expeditious disposal of the trial against him.

(iii) The applicant shall not repeat commission of similar type of offences in future.

(d) The Application stands disposed of in the above terms.

(A.M. BADAR)
JUDGE

.....