

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

CRIMINAL APPLICATION NO.6952 OF 2015

Shankar s/o Niluba Chavan,
Age 55 years, Occu. Agriculture,
R/o Tamblur, Kolwadi,
Taluka Deglur, District Nanded
(In the charge-sheet, the Police
have named the applicant as Shankar
@ Santosh @ Maruti @ Gulab s/o
Niluba @ Neelya Chavan)

..Applicant

Versus

1. The State of Maharashtra,
through District Superintendent
of Police, Nanded
2. The Sub-Divisional Police Officer,
Nanded City, Nanded

..Respondent

Mr S.A. Gaikwad, Advocate for applicant
Mr M.B. Bharaswadkar, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 4th February 2016

PER COURT

Heard.

2. The applicant is seeking regular bail in Crime No.1/2011 registered at Kundalwadi Police Station, District Nanded, for the offences punishable under Sections 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOC Act' for brevity).

3. It is not in dispute that the earlier application moved by the applicant for bail was rejected by this Court on merit, on 10th January 2012.

4. The change in the circumstances, which are brought to the notice of this Court by learned Counsel for the applicant are that the other co-accused, who were detained under MCOC Act are already released by this Court and as such, he placed reliance upon the orders of this Court passed in Criminal Application Nos.432 of 2015, 6027 of 2014 and 5659 of 2014. According to him, apart from parity, this Court should take judicial note of the fact that the applicant, who was shown to have been accused in total sixteen crimes, out of which in eight crimes in State of Andhra Pradesh, he is acquitted. He would then urge that of the remaining eight offences, three are of 2000, 2002 and 2003 and there are five offences of 2009. According to him, since MCOC Act is not invoked against the applicant along with substantive offence under the Indian Penal Code, he is entitled for bail in the matter and sought to draw support from the judgment of this Court in the matter of **Sk. Mehmood Sk. Mehboob Vs. State of Maharashtra**, reported in **2015 ALL MR (Cri) 3124**. Learned Counsel for the applicant then would urge that the applicant is detained under the provisions of MCOC Act since about last four years and the minimum punishment prescribed is imprisonment of five years and maximum of life imprisonment.

5. Leaned A.P.P. opposed the application on the ground that the earlier bail application of the applicant was rejected by this Court by order dated 18th March 2015 passed in Criminal Application No.432 of 2015, when the circumstances narrated herein above were available to him. He would then urge that it has to be presumed that applicant has argued all the grounds, which were available. In addition to

above, he sought rejection of application on the other ground that is to say, the parity cannot be applied to the case in hand.

6. Perused the earlier order passed by this Court rejecting the application moved by the present applicant for bail. While making out a case for grant of bail, the issue about non-filing of charge-sheet in a substantive offence under Indian Penal Code for the detention of the applicant under MCOC Act is not addressed rather not raised before the Court. Apart from above, the issue as regards his acquittal in all the cases pending at State of Andhra Pradesh, which were formed to be basis, is also not dealt with.

7. With the assistance, I have perused the charge-sheet. It is noted from the charge-sheet that there are about sixteen offences registered against the applicant in between 2000 and 2009. The applicant has claimed that of the total sixteen offences, he is already acquitted in seven offences, which were registered against him in State of Andhra Pradesh.

8. It is to be noted that so as to ascertain the continuing unlawful activity of the present applicant, who is styled as 'leader of syndicate', the investigating agency has relied upon the last offence of 2009 punishable under Section 457 and 380 of Indian Penal Code from the first offence No.106/2000, punishable under Section 394 of Indian Penal Code and the other offences in which applicant is an accused in intervening period. In the present case, the offence is registered under Section 3 of the MCOC Act, after the Superintendent of Police vide communication dated 17th December 2000 sought sanction from

the Special Inspector General of Police, Nanded Range, who has granted the sanction on 11th January 2011.

9. The fact remains that the offence under MCOC Act came to be registered vide Crime No.1/2011, whereas the last crime under the Indian Penal Code was registered against the applicant vide Crime No.64/2009 at Police Station, Biloli, punishable under Section 457 and 380 of Indian Penal Code. This Court, in the matter of Sk. Mehmood Sk. Mehboob Vs. State of Maharashtra (cited supra), has taken the following view :

“11. As such, basically, the respondents have to demonstrate that the accused have indulged into activity prohibited by law which is cognizable offence punishable with imprisonment of three years or more. In the present charge-sheet, there is no mention of any such activity which is cognizable offence punishable with imprisonment for three years or more. The charge-sheet is purely based on the earlier charge-sheets pending against the accused Nos.1, 3, 4 and other accused. The learned counsel have submitted that without there being any substantive offence which can satisfy first part of the definition of continuing unlawful activity there cannot be a charge of commission of cognizable crime. The learned Additional Public Prosecutor Mr. Doifode has submitted that the last offence alleged to have been committed by the accused is Crime No.33 of 2010 for the offences punishable under Sections 143, 147, 148 and 302 read with Section 149 of the Indian Penal Code and that a charge-sheet is pending against accused Nos.1, 3 and 4 for the said offence in the Court of Sessions at Akola. Mr Doifode has submitted that the present charge is based on

the said offence coupled with earlier charge-sheets filed against the accused during preceding period of ten years.

12. As stated earlier, there is no dispute that more than one charge-sheets have been filed against the accused in the preceding period of ten years. The question which arises for determination in the present circumstances is as to whether the respondent can contend that the present charge-sheet is in continuity with charge-sheet filed pursuant to the investigation of Crime No.33 of 2010 of Akot Feil Police Station. In my considered opinion, the submissions made on behalf of the respondents by the learned Additional Public Prosecutor Mr. Doifode cannot be accepted inasmuch as the charge-sheet in the said crime had already been filed and the accused are proposed to be tried in the Court of Sessions at Akola for the said offences. It is thus, obvious that the respondents cannot adduce evidence in the present case to establish the charge of Section 302 read with Section 149 of the Indian Penal Code against the accused for which the accused are already being tried in the Sessions Court Akola. It is not the case of the respondents that they intend to adduce evidence in the present case in respect of the charges levelled against the accused in Sessions Case pending in Akola Court pursuant to investigation of Crime No.33 of 2010 of Akot Feil Police Station.

14. As such, briefly stated, in the present charge-sheet, to establish the charge against accused Nos.1, 3, 4 and other accused, the respondents will have to establish that the accused had committed cognizable offence punishable with imprisonment of three years or more and that it was undertaken as a member of organised crime syndicate or on behalf of the said syndicate in respect of which more than one charge-sheets have been filed within preceding period of ten years. Therefore, the basic requirement or in other

words, one of the ingredients of the organized crime is that there should be an activity prohibited by law for the time being in force which is cognizable offence punishable with three years imprisonment or more. The respondents have submitted that to fulfill this requirement of the charge, the respondents rely upon the charge-sheet filed in the Court of Sessions at Akola. In this regard, it is needless to state that the respondents cannot produce the same witnesses before the Sessions Court, Akola as well as before the Special Judge, Amravati to prove the same charges in two Courts. It is abundantly clear that unless the first requirement of definition of 'continuing unlawful activity' is fulfilled, the proof of rest of the requirements is of no use. The charge-sheet in the present case does not even make allegations in respect of the first part of the definition of continuing unlawful activity.

16. It is thus, obvious that this Court is not satisfied that there are reasonable grounds for believing that accused Nos.1, 3 and 4 are guilty of any offence punishable under the Act. As such, in my considered opinion, all the applicants i.e. accused Nos.1, 3 and 4 are entitled to be released on bail.”

10. From the perusal of judgment referred supra, it is required to be inferred that the requirement for invoking provisions of MCOC Act is that, such accused has indulged into activities prohibited by law for the time being in force and as such, activities are cognizable and punishable with imprisonment of three years or more. Such accused has undertaken singly or jointly as a member of one of the crime syndicate on behalf of such syndicate and there is pendency of more than one charge-sheet before the competent Court in respect of such syndicate within the preceding period of ten years.

11. So far as the case in hand is concerned, it is required to be noted that there is no mention of an activity which is cognizable offence punishable with imprisonment for a period of three years or more and the provisions of MCOC Act are sought to be invoked independently of the offence under the Indian Penal Code. The charge-sheet under the MCOC Act is based on the pendency of the charge-sheet for the offences, which were registered and punishable under the Indian Penal Code from 2000 to 2009, however, when the provisions of MCOC are invoked, there was no substantive offence of 2011 under Indian Penal Code, so as to infer that the applicant was indulged in continuing unlawful activity. Even if, presuming that there is activity prohibited by the law, as has been relied upon, however, while invoking the provisions of MCOC independently, it is not brought on record that there is continuing unlawful activity, and the provisions were invoked in a substantive offence committed by the applicant under the provisions of Indian Penal Code. The provisions of sub-section (d) of Section 2, which defines the continuing unlawful activity and sub-section (e) of Section 2 which defines organised crime are worth referring to, which read thus :

2(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(e) “organised crime” means by continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

12. As is noticed herein above, the applicant since booked independently under the provisions of MCOC Act and not under substantive offence under Indian Penal Code, he is entitled for bail.

13. It is also required to be noted that the applicant is behind bar for more than four years and on the same ground, one of the accused is already ordered to be released. As such I proceed to pass the following order.

14. The applicant be released on bail in Crime No.1 of 2011 registered at Kundalwadi Police Station, District Nanded, for the offences punishable under Sections 3 (1) (ii), 3 (2), 3 (4) of the Maharashtra Control of Organised Crime Act, 1999, upon furnishing P.R. Bond of Rs.20,000/- with one surety in the like amount.

15. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)