IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 BAIL APPLICATION NO.239 OF 2021

Vinayak s/o Gopalsa Satpute
Age: 24 years, Occ.: Labour,
R/o. Ganesh Peth, Vasmath,
Tq.Vasmath, District Hingoli. ..Applicant

VERSUS

The State of Maharashtra
(Through Basmath City Police
Station, District Hingoli) ..Respondent

...

Advocate for Applicant : Shri Nilesh S. Ghanekar
APP for Respondent : Shri S.W.Munde

...

CORAM : M.G.SEWLIKAR, J.

DATE: 11th October, 2021

ORDER :-

1. By this application applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.0037 of 2019 registered with Vasmat City Police Station, Dist.Hingoli, under Sections 307, 323, 324, 147, 148, 149 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act (MCOCA), 1999.

2. Prosecution's case as narrated in the First Information Report (FIR) is that on 17th February, 2019 at 08:00 p.m., informant and his friend Nagorao Dadarao Gaikwad were returning home. When they came near Shani Mandir, Mangalwar

Peth, applicant, accused Sanket Nampalli, accused Vinayak Alkatwar, accused Madhav Nampalli, accused Anup Chepurwar came there and said to informant that in the past, informant had beaten all the accused and the applicant severely. Thereupon, accused Sanket Nampalli assaulted informant by means of a sword on the head of the informant. Applicant Vinayak Satpute assaulted informant on his head and back by means of a stone. Accused Vinayak Alkatwar assaulted informant by means of a rod on his shin. Accused Madhav Nampalli and Anup Chepurwar assaulted informant by means of a stone on his back, leg and shoulder. Witness Nagorao Gaikwad and Sohel Patel raised shout. Informant was rushed to the hospital. During hospitalization i.e. on 18th February 2019 informant lodged FIR on the basis of which crime as aforesaid came to be registered.

3. Heard Shri N.S.Ghanekar, learned counsel for the applicant and Shri S.W.Munde, learned APP for the respondent-State.

4. Shri Ghanekar, learned counsel for the applicant submitted that offences under the previous charge-sheets and offences under the present charge-sheet should have nexus. He submitted that another requirement is that there has to be organised crime syndicate and the offences in the earlier charge-

sheets ought to have been punishable with imprisonment for three years. These offences should have been committed as a member of the organised crime syndicate. These offences ought to have been committed either singly or jointly as a member of the organised crime syndicate. He further submits that it must be a continuing unlawful activity and this unlawful activity must be with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency. He submitted that fifteen offences have been registered against the applicant. In some of the offences, the applicant has been acquitted. In case of other offences, charge-sheet show that these offences were not committed for gaining pecuniary benefits or gaining undue economic advantage or other advantage. He submitted that in most of the offences, applicant is a single accused and there is no evidence to show that there is any nexus between all these offences. Merely filing of charge-sheet and taking cognizance by the Court is not enough. He submitted that merely alleging that these offences are committed being a member of organised crime syndicate is not sufficient to invoke the stringent provisions of MCOCA. No evidence is adduced to show that there was an organised crime syndicate and applicant was the member of the said organised crime syndicate. He submitted that while according sanctions, the Sanctioning Authority did not mention in the Sanction Order as to which offences were considered for according sanction under the MCOCA Act.

5. Shri Ghanekear, learned counsel for the applicant placed reliance on the following authorities:

(i) Judgment of this Court in Criminal Appeal No.308 of 2002 in the case of Madan S/o. Ramkisan Gangwani Vs. The State of Maharashtra and other connected matters, dated 26th March, 2009.

(ii) Sherbahadur Akram Khan Vs. The State of Maharashtra [MANU/MH/0938/2006].

(iii) Order of this Court in Criminal Bail Application No.93 of 2018 in the case of Ganesh Janardhan Gore alias Ganya Vs. State of Maharashtra, dated 1st November, 2018.

(iv) State Vs. Satya Prakash [MANU/DE/4298/2011].

(v) Order of this Court in Criminal Bail Application No.940 of 2020 in the case of Sonya Shaikh @ Jalaluddin Nijamuddin Shaikh Vs. The State of Maharashtra, dated 24th February 2021.

(vi) Judgment of this Court in Criminal Appeal No.732 of 2018 in the case of Sachin s/o Namdeo Rathod Vs. The State of Maharashtra, dated 27th November, 2018.

(vii) Judgment of this Court in Bail Application No.2241 of 2018 in the case of Shri Girish Kumaran Nayar Vs. The State of

Maharashtra, dated 17th February, 2021.

(viii) Order of this Court in Bail Application No.1454 of 2019 in the case of Sambhaji s/o Pandurang Sathe Vs. The State of Maharashtra, dated 20th December, 2019.

(ix) Order of this Court in Bail Application No.1696 of 2014 in the case of Mangesh Manik Kanchan Vs. The State of Maharashtra and another connected matter, dated 13th July, 2015.

6. Shri Munde, learned APP for the respondent-State submitted that the evidence adduced clearly shows that there is an organised crime syndicate and applicant is the member of organised crime syndicate. He submitted that there are some offences, which are committed for gaining pecuniary advantage or undue economic advantage or other advantage. He submitted that there is a nexus between the offences committed by the applicant. He submitted that applicant has committed these offences singly as well as jointly as a member of organised crime syndicate.

7. Before adverting to the merits of the case, it would be apposite to consider the relevant provisions of the MCOCA. Section 2(d) defines “continuing unlawful activity”, Section 2(e) defines “organised crime” and Section 2(f) defines “organised crime syndicate”.

Section 2(d) reads as under:

"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-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

Section 2(e) reads as under:

"organised crime" means any 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 threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

Section 2(f) reads thus:

"organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

8. Thus for constituting unlawful assembly there has to be an activity prohibited by law, it must be a cognizable offence punishable for imprisonment of three years or more. The said activity prohibited by law must be 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-sheets have been filed before a competent Court. These charge-sheets have to be filed within a period of ten years and that Court has taken cognizance of such offence.

9. For constituting organised crime there has to be any continuing unlawful activity by an individual. Said activity must be committed singly or jointly either as a member of organised crime syndicate or on behalf of such indicate. Such activity should include use of violence or threat of violence or intimidation or coercive or other unlawful means. The said activity must have been taken with the object of gaining pecuniary benefits or for gaining undue economic advantage or other advantage for himself or any other person or for promoting insurgency.

10. In the case of ***Madan S/o. Ramkisan Gangwani*** (supra), the Division Bench of this Court (Coram : A.H.Joshi and R.C.Chavan, JJ.) held as under:

> *"34. In Ranjitsingh's case the learned Single Judge observed that the definitions, though intertwined in a cyclic order, are clear and unambiguous. Even the Apex Court in Bharat Shah's case (2008*

AIR SCW 6431) observed that the definitions were not vague and they defined the terms with clarity. It would, therefore, follow that each ingredient in the definitions, or the alternative thereof provided by the definitions themselves, would have to be proved. Viewed thus, for charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,

(ii) which is prohibited by law,

(iii) which is a cognizable offence punishable with imprisonment for three years or more,

(iv) undertaken either singly or jointly,

(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate.

(vi) (a) in respect of similar activities (in the past) more than one charge sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by :

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means.

(viii)(a) with the object of gaining pecuniary benefits or gaining undue or other advantage for himself or any other person, or

(b) with the object of promoting insurgency."

11. Thus, for invoking provisions of MCOCA there must be continuing unlawful activity by an individual, the said activity must be committed singly or jointly either as a member of orgnised crime syndicate or on behalf of such indicate. Such

activity must have been taken with the object of gaining pecuniary benefits or for gaining undue economic advantage or other advantage for himself or any other person or for promoting insurgency.

12. In the case of ***Shri Girish Kumaran Nayar*** (supra) Single Judge of this Court (Coram : Sandeep K.Shinde J.) held that :

> "*in "Ranjeetsingh Bramajeetsing Sharma Vs. State of Maharashtra and Another [(2005) ALL MR (cri.) 1538 (S.C.)], it is held that unlawful activity alleged in the previous charge-sheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. Thus, it was imperative on the part of the prosecution to establish prima-facie some nexus between past crimes at the discredit of the applicant and the present crime, which has not been shown by the prosecution nor the material on record suggests and indicates such nexus*".

13. From this decision of this Court, it is clear that not only the past crimes but the present crime must have the element of continuing unlawful activity, the element of organised crime and the organised crime syndicate. If the present crime does not indicate that it was committed as a continuing unlawful activity by an individual singly or jointly either as a member of organised crime syndicate or on behalf of such syndicate, and that it was

not taken with the object of gaining pecuniary benefits or for gaining undue economic advantage or other advantage for himself or any other person or for promoting insurgency, in that case past activities even if they are covered by the MCOCA, present crime cannot be linked with those crimes. There has to be some nexus between past crimes and the present crime.

14. In the case of ***State of Maharashtra Vs.Bharat Baburao Gavhane and Ors. [2006 ALL MR (Cri) 2895]***, learned Single Judge of this Court while considering the provisions of Section 2(1)(e) of the MCOCA has observed that "*merely stating that the gang leader and his associates run a crime syndicate with a view to gain pecuniary benefits and advantages and supremacy over rival gangs by violence, intimidation and other coercive means, is not sufficient to maintain a prosecution under the MCOCA*".

15. In the case of ***Bhupendra @ Golu s/o Suryakant Borkar Vs. State of Maharashtra, through P.S.O. Ajni, Nagpur*** in Criminal Application (BA) No.608 of 2016, it has been observed as under :

"Now, drawing further guidance from the law laid down by the Hon'ble Apex Court in the case of Bharat Shantilal Shah, which case was not cited earlier and so was not considered previously by this Court, it has also to be held that previously registered offences must have some commonness with the offences registered in the present crime. If they do not bear any similarity or commonality to the present

crime, they could not be taken into consideration for denying the relief of bail or otherwise the classification notionally made by putting previous offences in the same class as the present crime, as held by the Hon'ble Supreme Court, would suffer from the vice of unreasonableness."

16. On the basis of law laid down by the Hon'ble Supreme Court and by this Court, it will have to be seen whether applicant has made out any case for bail.

17. For seeking sanction of the Special Inspector General of Police, a letter was addressed to the Special Inspector General of Police. It is seen from the said letter that in all fifteen offences are registered against the applicant. This letter shows that Crime No.0007 of 2019 under Sections 307, 326, 325, 324, 506 of the Indian Penal Code and Crime No.0037 of 2019 under Sections 307, 324, 147, 148, 149 of the Indian Penal Code were also included. These offences, at the time of forwarding letter for seeking sanction, were under investigation. One of the prerequisites for invoking provisions of the MCOCA is that in the preceding ten years, charge-sheet ought to have been filed and cognizance of the offences ought to have been taken. At the time of seeking sanction, these two crimes were under investigation. Therefore, consideration of these crimes for invoking MCOCA is out of question. Even if Crime No.0007 of

2019 is considered on the footing that charge-sheet is filed and cognizance is taken, in that event also the said crime cannot be considered for invoking the provisions of MCOCA as the allegations show that offence was not committed for pecuniary gain. The allegations show that the applicant and another accused had gone to the hotel and after having dinner, accused left mobile in the hotel itself. When they came back and asked Manager about the mobile, Manager replied arrogantly. Owner came there and owner also replied arrogantly. The accused called applicant and other accused Sanket Nampalli and the applicant stabbed informant on both the thighs and chest. This does not show that offence had taken place for pecuniary gain. Therefore, this offence also cannot be considered for invoking the provisions of MCOCA.

18. In case of Crime Nos.0007 of 2017, 0043 of 2017, 0102 of 2017, 62 of 2017, applicant has been acquitted. Therefore, these crimes ought not to have been considered for giving sanction.

19. Only offences involving pecuniary advantage are Crime Nos. 371 of 2017 and Crime No.76 of 2017. In case of Crime No.76 of 2017, applicant was found possessing foreign liquor for

sale. In case of Crime No.6072 of 2014, allegations are that applicant was found possessing country liquor for sale. In both offences, country liquor was found at his residence. In case of Crime No.0371 of 2017 under Sections 4, 25 of the Arms Act and Section 65 (b) (e) of the Maharashtra Prohibition Act, accused was found possessing illicit liquor for sale. All these are individual offences. Nothing has been brought on record to show that these offences have been committed by the applicant either singly or jointly as a member of organised crime syndicate. There is no evidence to show that there was an organised crime syndicate and applicant is the member of organised crime syndicate and he committed these offences either singly or jointly as a member of organised crime syndicate. No nexus is established between any of these offences. Similarly, no nexus is established with the offence in question i.e. Crime No.0037 of 2019. The allegations in Crime No.0037 of 2019 clearly show that no pecuniary advantage was involved in it. Therefore, merely alleging that there was an organised crime syndicate and the applicant committed these offences as a member of organised crime syndicate for continuing unlawful activity and for pecuniary advantage is not enough. Prosecution has to establish nexus between these offences. Since the element of nexus is lacking, it cannot be said that provisions of the MCOCA are attracted. In addition to this, present crime does not indicate that it was committed for pecuniary gain. For this reason also MCOCA cannot be attracted. Moreover, sanction is produced on record which shows that it is as vague as it could be. It does not show as to which offences were considered by the Sanctioning Authority for according sanction for invoking provisions of MCOCA. Therefore, at this stage, there is no evidence to show that applicant has committed offence under the MCOCA and there is a possibility of conviction under this Act. In this view of the matter, applicant has made out a case for bail. Hence, the order :

ORDER

i) Bail Application is allowed.

ii) Applicant be released on P.R.Bond of Rs.1,00,000/- (Rs.One lakh only) with one solvent surety in the like amount, in connection with Crime No.0037 of 2019, registered with Vasmat City Police Station, Dist.Hingoli, under Sections 307, 323, 324, 147, 148, 149 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4) of the MCOCA, and on condition that he will stay out of Vasmat town, District Hingoli, till conclusion of the trial. Applicant is permitted to enter Vasmat town only for attending the Court on dates fixed during the trial.

iii) Bail Application is disposed of.

(**M.G.SEWLIKAR**)
JUDGE

SPT