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

BAIL APPLICATION NO.850 OF 2020

Subhash s/o Mohan Pawar Applicant

Versus

The State of Maharashtra Respondent

Mr.P.G.Godhamgaonkar, advocate holding for Mr.M.D.Godhamgaonkar, advocate for the applicant.
Mr.S.B.Narwade, APP for the Respondent.

WITH
BAIL APPLICATION NO.1010 OF 2020

Virendra @ Satish s/o Sopanrao Kanoji (Bhandari) Applicant

Versus

The State of Maharashtra Respondent

Mr.P.G.Godhamgaonkar, advocate holding for Mr.M.D.Godhamgaonkar, advocate for the applicant.
Mr.S.B.Narwade, APP for the Respondent.

WITH
BAIL APPLICATION NO.895 OF 2020

Vinod s/o Dayalu Dighore Applicant

Versus

The State of Maharashtra Respondent

Mr.V.D.Sapkal, Senior Counsel i/by Mr.R.V.Gore with Mr.D.A.Khandagale, advocates for the applicant.
Mr.S.B.Narwade, APP for the Respondent.

WITH

BAIL APPLICATION NO.905 OF 2020

Gurucharansingh @ Lucky s/o
Sampuransingh Gill Applicant

Versus

The State of Maharashtra Respondent

Mr.Satej S. Jadhav, advocate for the applicant.
Mr.S.B.Narwade, APP for the Respondent.

CORAM : V.K.JADHAV, J.

Reserved on : 06th January, 2021.
Pronounced on : 15th February, 2021.

ORDER :

1 The applicants (1) Subhash s/o Mohan Pawar – applicant in B.A. No.850/2020, (2) Virendra @ Satish s/o Sopanrao Kanoji (Bhandari) – applicant in B.A.No.1010/2020, (3) Vinod s/o Dayalu Dighore (applicant in B.A. No.895/2020 and (4) Gurucharansingh @ Lucky s/o Sampuransingh Gill – applicant in B.A.No.905/2020, are seeking bail in connection with Crime No. 176/2019, registered with Itwara Police Station, Nanded for the offences punishable under Sections 307, 120-B, 161, 384 read with Section 34 of the Indian Penal Code and Under Sections 3, 25 and 27 of the Indian Arms Act and under Section 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime

(“MCOC”) Act, 1999.

2 Brief facts of the crime are as follows:

On the basis of the complaint lodged by one Govind Tulshiram Kokulwar, Crime No.176/2019 came to be registered at Itwara Police Station, Nanded, for the offences punishable under Sections 307, 120-B, 161, 384 read with Section 34 of the Indian Penal Code and Under Sections 3, 25 and 27 of the Indian Arms Act against unknown persons. On 17th August, 2019, informant Govind proceeded in his four wheeler bearing Registration No.MH-26-BC-7212 for visiting his ongoing construction at Raja Ranjitsingh Market, Old Mondha, Nanded. After inspecting the said construction, at about 4.30 p.m., informant Govind proceeded towards his office. On reaching the office, situated at Vinkar Colony, Nanded, the informant parked his four wheeler and started proceeding towards his office. At that time, he felt something like sustaining electric shock on his back of the body and he fell down. He was immediately taken to a near hospital of Dr.Bhopale. Dr.Bhopale after preliminary examination, advised to shift the informant to a superspeciality hospital. Informant Govind, thus, was thereafter taken to Global Hospital, Nanded and on his examination, he was treated. The concerned doctor, who has treated informant Govind, has opined that informant Govind has sustained bullet injury on his back.

3 Thereafter investigation was carried out by the then Investigating Officer and on the basis of CCTV footage and other material collected during the course of the investigation, initially six accused persons were traced out. Accused Bajrang @ Yodha Bhimrao Narwade, accused Raju s/o Deorao Raut, accused Gurucharansingh @ Lucky s/o Sampuransingh Gill (applicant in B.A.No.905/2020, Syed Najidoddin @ Guddu s/o Syed Muniroddin, Subhash s/o Mohan Pawar (applicant in B.A.No.850/2020) came to be arrested in connection with the crime. Some of them came to be arrested along with pistol and live cartridges, etc. Thereafter two more accused persons came to be arrested in connection with the present crime, namely, Virendra @ Satish s/o Sopanrao Kanoji (applicant in B.A. No.1010/2020) and Vinod s/o Dayalu Dighore (applicant in B.A. No.895/2020).

4 It was revealed during the course of investigation that the accused persons had committed the crime for monetary benefits in an organized manner under the leadership of one Harvindersingh @ Rindha s/o Charansingh Sandhu (still absconding). Therefore, for addition of charges under the

provisions of Maharashtra Organized Control of Crime ("MCOC") Act, 1999, a proposal was submitted to the Special Inspector General of Police, Nanded Range, Nanded. The proposal was sanctioned by the Special Inspector General of Police, Nanded Range, Nanded, on 20th November, 2019, and accordingly Sections 3(1)(i), (ii), (iii), (2), (3) and (4) of the MCOC Act came to be inserted in the crime and further investigation was carried on. Applicant Vinod s/o Dayalu Dighore (applicant in B.A.No.895/2020) was working as Police Inspector at Mangrulpir Police Station, District Washim. His involvement, in the commission of organized crime, along with other accused persons, has been revealed.

5 Heard both sides.

6 Learned Counsel Mr.Godhamgaonkar, appearing for applicant in B.A.Nos.850/2020, submits that the informant has not disclosed name of this applicant in the First Information Report. It is submitted that applicant Subhash s/o Mohan Pawar was in jail at Pen, District Raigad from 26th July, 2019 and there is no evidence of his participation in the planning or execution of alleged assault on the informant on 17th August, 2019. The learned Counsel submits that applicant Subhash came to be

arrested, in connection with present crime on 06th November, 2019, on the basis of statement made by co-accused Raju Raut. Learned Counsel further submits that even in the supplementary statement, informant Govind has stated that he learnt from police that five persons have made a conspiracy to kill him and in these five persons, name of the applicant is referred. The informant has not made any allegations against applicant about any overt act or conspiracy. It is submitted that in the statement of son of informant, namely Nagesh, there is no whisper, direct or indirect, about any overt act on the part of applicant-Subhash in the commission of present crime. He submits that on the face of such evidence, ingredients of Sections 307, 120-B, 161, 384 read with Section 34 of the Indian Penal Code, are not established.

7 So far as provisions of Maharashtra Organized Crimes Act are concerned, the learned Counsel has taken me through the ratio laid down in the judgments of this Court in the case of **Bhupendra @ Golu Suryakant Borkar Vs. State of Maharashtra**, reported in 2017 ALL MR (Cri) 1561 and (ii) **Mangesh Manik Kanchan & another Vs. State of Maharashtra**, reported in 2016 (1) Bom.C.R. (Cri.) 350, to contend that in the absence of any material allegations against

members of gang, practically they cannot be prosecuted under Section 3(4) of the MCOC Act and as such, bail cannot be denied merely because they were members of gang and if released, may commit similar crime in view of Section 21(4) of the MCOC Act. The learned Counsel submits that the applicant may be released on bail.

8 So far as applicant Virendra s/o Sopanrao Kanoji (Bhandari) (applicant in B.A. No.1010/2020), learned Counsel Mr.Godhamgaonkar submits that the First Information Report came to be lodged against unknown persons. There is no allegation about participation or any overt act on the part of this applicant in the commission of crime. Even in the supplementary statement, the informant has not attributed any role to this applicant in the commission of crime. The informant, in the supplementary statement, referred to the statement of his nephew Krishna, who informed him, before the doctors of Global Hospital informed him about the bullet injury sustained by the informant, the present applicant stated that informant is injured by bullet. In his statement, Krishna, nephew of informant, has stated that after admission of the injured informant in the hospital, applicant came there and shown his readiness for carrying the injured for special treatment in the hospital outside

Nanded. The learned Counsel, thus, submits that neither the offences under the Indian Penal Code nor under Maharashtra Control Of Organized Crime Act are attracted in this case. In support of his submission, the learned Counsel placed reliance upon the ratio laid down in the case of **Bhupendra @ Golu Suryakant Borkar Vs. State of Maharashtra**, reported in 2017 ALL MR (Cri) 1561 and (ii) **Mangesh Manik Kanchan & another Vs. State of Maharashtra**, reported in 2016 (1) Bom.C.R. (Cri.) 350 The learned Counsel, thus, submits that the applicant is not involved in any other offence. The learned Counsel submits that the applicant may be released on bail.

9 Mr.V.D.Sapkal, learned Senior Counsel appearing for applicant Vinod Dayalu Dighore (B.A.No.895 of 2020) submits that at the relevant time, the applicant was working as Police Inspector at Mangrulpeer Police Station, District Washim. The learned Senior Counsel submits that on the basis of supplementary statement of the informant and his son, the applicant is implicated in the present rime. It is submitted that the provisions of MCOC Act are not applicable against present applicant as the requirements in respect of continuing unlawful activity, organized crime and crime syndicate, which are required to be satisfied, are not fulfilled. In support of this contention,

the learned Senior Counsel has placed reliance on the ratio laid down by the Hon'ble Supreme Court in the case of **Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra and another**, reported in AIR 2005 SC 2277 and in the case of **State of Maharashtra and others Vs. Lalit Somdatta Nagpal and another**, reported in 2007 AIR SCW 1339. The learned Senior Counsel submits that no specific role is attributed to the present applicant. Neither there is any abetment nor there is any previous offence registered against the applicant to attract provisions of Maharashtra Control Of Organized Crime Act. The learned Senior Counsel submits that there is no previous sanction granted by the Special Inspector General of Police, Nanded Range, Nanded for registering the offence under the provisions of MCOC Act. The learned Senior Counsel, thus, submits that the applicant may be released on bail.

10 Argument advanced by Mr.Satej S. Jadhav, learned Counsel for applicant Gurucharangsingh s/o Sampurnsingh Gill (applicant in Bail Application No.905/2020) is on similar lines, as argued by the learned Counsel appearing for other applicants. The learned Counsel submits that the applicant is arrested on the basis of statement of co-accused. Though there is recovery of gun and 7.65 caliber bullet from him, there is recovery of gun

capable of firing both 7.65 and 0.32 caliber bullets from co-accused Raju. He submits that bullet of 0.32 caliber was recovered from the informant's body. It is submitted that except the present crime, the applicant is not co-accused in any crime with other accused in this crime. The learned Counsel submits that, therefore, provisions of MCOC Act are not attracted against the present applicant. The learned Counsel, therefore, submits that the applicant may be released on bail.

11 A common affidavit-in-reply is filed in these four bail applications on behalf of the Respondent-State, sworn in by Dr.Siddheshwar Baliram Bhore, Sub Divisional Police Officer, Itwara, Nanded. In paragraph no. 4 of the affidavit, it is stated that during the course of investigation, it was revealed that the accused had committed the crime for monetary benefits in an organized manner and, therefore, provisions of MCOC Act are added under the order passed by the Special Inspector General of Police, Nanded Range, Nanded, on 20th November, 2019. It is stated that out of eight, seven accused persons were arrested and seized muddemal property was sent to C.A., however, the C.A. report is awaited. It is stated that overall, statements of 16 witnesses were recorded under Section 164 of the Criminal Procedure Code. It is stated in the affidavit that during the

course of investigation, confessional statement of arrested accused Virendra Kanoji was recorded under Section 18 of the MCOC Act, which supports the case of the prosecution. It has come in the affidavit that the Additional Director General of Police, Law and Order, Mumbai, has granted permission to file charge sheet under the provisions of MCOC Act against the accused in the present crime. It is stated in the affidavit that thorough investigation was carried out and there is recovery of country made pistols and live rounds. It is submitted that Air gun was recovered from accused Gurucharansingh and accused no.5 Raju Raut. It is submitted that the ballistic report reveals that the hole caused to the clothes on the person of the injured informant is caused by the bullet found in his body. The examination report in respect of pistol recovered from accused Gurucharansingh @ Lucky reveals that the country made pistol recovered from him is capable of chambering and firing 7.65 mm pistol cartridges. It is further stated that the examination report also reveals that the Air Gun and Country made Pistol and live rounds seized from the house of accused Subhash Pawar, at the instance of accused Raju Raut, are in working condition and the same were used for firing prior to their receipt in the laboratory and the country made hand-gun is capable of chambering and firing 7.65 mm pistol cartridge as well as 0.32 inch revolver cartridge. The chart in respect of each applicant in respective Bail Applications, disclosing sufficient material against them showing their involvement in the aforesaid crime, is also annexed with the affidavit-in-reply.

12 The learned A.P.P. has, therefore, strongly resisted the application on the ground that the gang leader accused Harvindarsingh @ Rindha is not yet arrested as he is still absconding and if the applicants are released on bail, further investigation and arrest of absconding accused would be hampered. The learned A.P.P. submits that there is terror of absconding accused Rindha, his gang and hirelings, including the present applicants in Nanded district and if the applicants are released on bail, they will certainly pressurize the witnesses who hail from Nanded, which would affect fair trial before the Special Court. In support of his submissions, the learned A.P.P. has placed reliance on the following pronouncements.

01 **Vinod G. Asrani Vs. State of Maharashtra**,
2007 SCC (2) 633;

02 **Anil Sadashiv Nanduskar Vs. The State of Maharashtra**,
2008 MLJ Cri. (3) 650;

03 **Govind Sakharam Ubhe Vs. The State of Maharashtra**,
2009 (3) Mh.L.J. Cri. 1903

04 **Chenna Boyanna Krishna Yadav Vs. The State of Maharashtra**, 2006(1) Bom.C.R. (Cri) 623;

05 **Gokul Bhagaji Patil Vs. The State of Maharashtra**, 2006 ALL MR (Cri) 389;

13 The learned A.P.P., therefore, submits that the applicants, in the aforesaid respective bail applications, may not be released on bail.

14 The incident had taken place on 17th August, 2019. Informant Govind had proceeded in his four wheeler bearing Registration No.MH-20-BC-7212 for visiting his ongoing construction at Raja Ranjitsingh Market, Nanded. After inspecting the said construction, at about 04.30 p.m., informant Govind proceeded to his office. On reaching the office situate at Venkat Colony, the informant had parked his four wheeler and started proceeding towards his office on foot. At that time, he felt something like electric shock on the back of his body and he fell down. He was immediately taken to one private hospital viz. Global Hospital of Dr.Bhopale and as per his advice, the informant was shifted to one Super-speciality hospital. On his examination, the concerned Medical Officer, who has treated him, has opined that informant Govind has sustained bullet injury on his back. It has been revealed during the course of

investigation that the accused persons, including the present applicants, have committed the offence for monetary benefits in an organized manner under the leadership of co-accused Harvindersingh @ Rindha Charansingh (still absconding).

15 On careful perusal of the charge sheet, it appears that on 07^{th} December, 2019, the supplementary statement of informant Govind was recorded. According to him, he was given treatment at Global Hospital, Nanded for some time. After getting primary treatment, informant Govind was finally shifted to Hinduja hospital, Mumbai. Informant Govind has undergone surgery in Hinduja hospital and the bullet in the back portion of his body was removed. While he was under treatment in his house, his supplementary statement was recorded. According to him, on 05^{th} February, 2018, co-accused Harvindersingh @ Rindha has sent one whatsapp message on the mobile of the informant. (The informant has mentioned both the cell numbers i.e. cell number of co-accused Harvindersingh @ Rindha and his own mobile number). Informant Govind has further explained that it was a threatening message. The said message was specifically in respect of demanding an amount of Rs.One crore as a ransom. The informant Govind has ignored the said message. However, on 02^{nd} November, 2018, co-accused

Harvindersingh @ Rindha, through his associate Akash Gadiwale has again demanded an amount of Rs.One crore as ransom on the another mobile number of the informant. Informant Govind has further stated in his supplementary statement that on the same day at about 11 p.m., he has received a phone call of co-accused no.8- API Vinod Dayalu Dighore (applicant herein) informing him as to whether he has received any threats on mobile demanding amount of ransom. Informant Govind has inquired with co-accused API Vinod as to how he came to know about the threats extended to him. The informant has disclosed to co-accused API Vinod that threats were extended by co-accused Harvindersingh @ Rindha. Informant Govind got surprised by the said call of co-accused API Vinod, as the threatening message received from Harvindersingh @ Rindha was especially within the knowledge of informant and he has not disclosed about the same to anyone. However, co-accused API Vinod informed the informant that he should come to the house of co-accused Virendra @ Viru Bhandari. On 03rd November, 2018, informant Govind went to the house of co-accused Virendra @ Viru where co-accused no.8 – API Vionod was also present there. On reaching there, co-accused no.8 – API Vinod directly asked the informant as to whether he has received a message from co-accused Harvindersingh @ Rindha and as to how much amount has been demanded. Informant disclosed to co-accused API Vinod that co-accused Harvindersingh @ Rindha has demanded him amount of Rs.One Crore. Thereafter co-accused API Vinod and co-accused Virendra told the informant that he should not take any tension and they would talk to co-accused Harvindersingh @ Rindha. Though thereafter co-accused Harvindersingh @ Rindha has not made a call to the informant nor sent any message, however, while the informant was hospitalised for his bullet injury, co-accused Harvindersingh @ Rindha again forwarded an audio clip extending threats on the cell phone of son of the informant, namely Nagesh on 20th August, 2019. The informant Govind was also informed by his nephew Krishna that after the said incident of 17th August, 2019, when the informant was admitted in the Global hospital, before his medical examination, co-accused Virendra @ Viru (applicant herein) has disclosed to his nephew Krishna that informant Govind has sustained bullet injury on his back. Even for no reason, co-accused Virendra @ Viru went to Mumbai to meet informant Govind in the hospital and he used to talk on his mobile suspiciously in low voice informing the activities of informant to someone. According to the informant, he was assaulted by the gang headed by co-accused Harvindersingh @ Rindha due to non fulfillment of said demand for Rs.One Crore.

16 It has been transpired during the course of investigation that co-accused Harvindersingh @ Rindha, who is a gang leader, hails from Nanded. On earlier occasion, Crime No.174 of 2019, for the offences punishable under Sections 302, 307, 397, 398, 120-B, 34 of the Indian Penal Code and under Section 3/25 and 27(2) of the Indian Arms Act along with offence punishable under Sections 3(i), 3(ii), 3(2) and 3(4) of the MCOC Act, came to be registered against him. In the said crime, after completion of investigation, charge sheet has been submitted. In connection with the said crime, all the members of the gang headed by co-accused Harvindersingh @ Rindha came to be arrested. Co-accused Harvindersingh @ Rindha has organized new gang of criminal minded persons and started demanding ransom and assaulting the people for non compliance of the same. Though co-accused Harvindersingh @ Rindha hails from Nanded, however, he is a wanted criminal in the State of Punjab and there are in all 23 crimes registered against him. It has been revealed during the course of investigation that co-accused Harvindersingh @ Rindha has organized various gangs in the different States for demanding ransom. He has also provided modern technology weapons along with mobile hand sets to the members of his gang.

17 The applicant co-accused no.6 Subhash Mohan Pawar is resident of village Barad, Tq. Hadgaon. There are five crimes registered against him including the crimes for the offences punishable for committing murder, attempt to commit murder, demanding ransom, committing dacoities, etc. It has also been revealed during the course of investigation that he was continuously in touch with co-accused Harvindersingh @ Rindha. He has kept two pistols and one live cartridge in his house and out of which, one pistol and one live cartridge has been used by co-accused no.2 – Gurucharansingh (applicant herein) in the present crime. Said pistol was given to co-accused no.2 Gurucharansingh by co-accused no.5 Raju Deorao Raut.

18 So far as applicant co-accused no.7 – Virendra is concerned, there are twelve crimes registered against him including attempt to commit murder, assaulting public servant, etc. It has been revealed during the course of investigation that co-accused Virendra continuously remained in touch with father of co-accused Harvindersingh @ Rindha. Further, co-accused no.7 – Virendra is also close associate of co-accused no.8 – API Vinod Dighore.

19 Applicant co-accused no.8 – API Vinod Dighore was working as A.P.I. during the period from 2015 to 2019 in Crime Branch, Nanded. Even though informant Govind has received a threatening call from co-accused Harvindersingh @ Rindha for demand of huge amount, however, co-accused API Vinod has called the informant in the house of co-accused no.7 Virendra for settlement. He has not initiated any action against co-accused Rindha. It is also highly objectionable that co-accused no.8 – API Vinod remained in contact continuously with co-accused persons including co-accused no.7 Virendra though they are having criminal background. It is also revealed during the course of investigation that co-accused no.8 – Vinod remained in contact with co-accused no.2 Gurucharansingh and co-accused no.6-Subhash Mohan Pawar on phone. It has been transpired during the course of investigation that during the tenure of co-accused Vinod in Crime Branch at Nanded, threatening calls from co-accused Harvindersingh @ Rindha's gang were increased.

20 So far as co-accused no.2 – applicant Gurucharansingh is concerned, the pistol used in the commission of crime along with 3 live cartridges came to be recovered from him. There are six crimes registered against him.

21 Learned Counsel Mr.Godhamgaonkar has vehemently submitted on behalf of applicant – co-accused Subhash that except the statement of co-accused Raju Raut, there is hardly any evidence against the applicant to connect him with the alleged crime. It is also submitted that even the statement of co-accused Raju is also not sufficient to infer about the involvement of applicant Subhash in the commission of crime.

22 The learned Counsel has placed reliance on the decision in the case of **Bhupendra @ Golu Suryakant Borkar Vs. State of Maharashtra**, reported in 2017 ALL MR (Cri) 1561, wherein, in the facts of the said case, by referring the view expressed by the Hon’ble Supreme Court that, *previously registered offences having anything common with the offences registered in the present crime and 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*., the learned Single Judge of this Court has released the applicant therein on bail It is also observed that one of the important criteria to decide the application for bail for the offences punishable under the provisions of the MCOC Act is the possibility of committing a similar offence.

23 In the instant case, there are 5 crimes registered against co-accused Subhash. Crime No.5/2016 came to be registered at Police Station Vasantnagar, District Yeotmal, for the offence punishable under Section 302 of the Indian Penal Code. Crime No.140/2019 is registered at Police Station Hadgaon for the offence punishable under Section 384 of the Indian Penal Code. Crime No.246 of 2019 came to be registered at Police Station Vasmat, District Hingoli, for the offence punishable under Section 379 of the Indian Penal Code. Crime No.118 of 2019 is registered at Police Station Pain, District Raigad, for the offence punishable under Sections 399, 402 of the Indian Penal Code; and present crime no.176 of 2019 is registered at Itwara Police Station , Nanded for the offence punishable under Sections 307, 120-B, 161, 384 read with Section 34 of the Indian Penal Code. There are other offences and it can be reasonably inferred that the applicant is having a tendency of committing similar offences if released on bail. Furthermore, the previously registered offences have commonness with the offences registered in the present crime.

24 I have carefully perused the statements of the witnesses at page nos.47, 129, 49 and 130. *Prima facie*, it appears that statements of these witnesses indicate involvement

of the applicants-accused persons in the commission of crime in an organized manner as member of the gang.

25 Learned Counsel Mr.Godhamgaonkar, while arguing the case on behalf of co-accused Virendra, vehemently submitted that except the evidence that the applicant-Virendra used to chat on whatsapp with co-accused Harvindersingh @ Rindha, there is no connecting evidence against the applicant. The learned Counsel placed reliance on the order dated 09th November, 2020, passed by this Court in **Criminal Application No.370 of 2020** (Rajendra s/o Gulabrao Armarkar Vs. State of Maharashtra), wherein the learned Single Judge of this Court at Nagpur has granted bail to the accused persons in connection with the crime registered under the provisions of MCOC Act. In terms of provisions of sub-section (4) of Section 21 of the MCOC Act, no person accused of an offence punishable under MCOC Act shall be released on bail unless the Court is satisfied that there are reasonable grounds to believe that he is not guilty of such offence and that he is not likely to commit any offence while on bail. The learned Single Judge has referred to the decision in the case of **Narendra Singh and another Vs. State of M.P**., (2004) 10 SCC 699, wherein the Hon’ble Apex Court has observed that the restrictions on the part of the Court to grant

bail should not be pushed too far and the bail may be granted having regard to the material brought on record if the Court is satisfied that in all probability, the accused may not be ultimately convicted. It is also observed by the Hon'ble Supreme Court that the provisions of MCOC Act must receive a strict construction so as pass the test of reasonableness.

26 Learned Counsel Mr.Godhamgaonkar has further placed reliance on the case of **State of Maharashtra Vs. Jagan**, reported in 2011 (5) MLJ 386, wherein the Full Bench, while answering the reference as regards ingredients necessary to make out the case of an organized crime, as defined under the MCOC Act, has held that, the following ingredients will be necessary to make the case of an organized crime. Those ingredients are: (i) that there has to be continuing unlawful activities; (ii) that such activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organized crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion, or other unlawful means; (v) that such an activity has to be with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or

promoting insurgency.

27 In the supplementary statement of the informant dated 07.12.2019, he has explained about the threat received from co-accused gang leader Harvindersingh @ Rindha. In the first supplementary statement informant named applicant Virendra along with applicant API Vinod Dighore in respect of meeting of “settlement” scheduled at the house of applicant Virendra on 03.12.2019. Furthermore, applicant-accused Virendra already knew about the gun shot injury though nature of the said injury was not disclosed by the informant to anybody till that time. Thus, the only inference, that can be drawn, is that applicant-accused Virendra was knowing about the firing and injury by bullet sustained by the informant on his back. I have carefully gone through the statements of the witnesses at page nos.61, 133, 63, 134, 68, 69, 75 and the confessional statement of applicant-accused Virendra from page nos.149 to 154. Thus, so far as the ingredients explained in the case cited supra, *prima facie* there is evidence to attract those ingredients.

28 Learned Senior Counsel Mr.Sapkal, appearing for the applicant-accused API Vinod Dighore, submits that the applicant was working in the Local Crime Branch, Nanded since 2015 to

2018. He has been transferred from Nanded to MangrulPeer, District Washim on 21.06.2019. The alleged incident has occurred on 17.08.2021 i.e. after two months from his transfer. The learned Senior Counsel submits that in the supplementary statement of the informant and his son, the applicant-accused API Vinod Dighore came to be implicated in this case. The learned Senior Counsel submits that permission was sought by the Investigating Officer against 13 persons for addition of provisions of MCOC Act and the name of the applicant API Vinod Dighore was not mentioned in those 13 persons. The Special Inspector General of Police, Nanded, has passed an order on 20.11.2019 granting approval to include provisions of Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act in the present Crime No.176/2019 and finally, approval was granted under Section 23(1)(a) of the MCOC Act by the Special Inspector General of Police, Nanded, against six persons. The learned Senior Counsel submits that the applicant API Vinod, since was working in Local Crime Branch, Nanded, provisions of Section 3(2) and Section 24 of the MCOC Act were made applicable to him. The learned Senior Counsel submits that there are certain conditions required to be satisfied and those are, there should be continuing unlawful activity by organized crime syndicate and there should be a organized crime. The MCOC Act specifically provides the definition of abetment under Section 2(1)(a) of the MCOC Act. Unless all these requirements are satisfied, the person cannot be held guilty thereof. The learned Senior Counsel, in order to substantiate his contention, placed reliance on the judgment in the case of **Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra and another**, reported in AIR 2005 SC 2277. The learned Senior Counsel has particularly placed reliance on paragraphs no.30 to 33, which reads as under:

> "30 The interpretation clause as regard the expression 'abet' does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may read in the light of the definition of these words under Sections 107 and 108 of the Indian Penal Code. The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organized crime or organized crime syndicate or to a person involved in either of them. It, however, includes (a)

communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organized crime syndicate. Communication to, or association with, any person by itself, as was contended by Mr.Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organized crime syndicate. Thus, the offence under Section 3(2) of MCOCA must have a direct nexus with the offence committed by an organized crime syndicate. Such abetment of commission of offence must be by way of accessories before the commission of an offence. An offence may be committed by a public servant by reason of acts of omission and commission which would amount to tampering with the investigation or to help an accused. Such an act would make him an accessory after the commission of the offence. It is interesting to note that whereas Section 3(2) having regard to the definition of the term 'abet' refers directly to commission of an offence or assisting in any manner an organized crime syndicate, Section 24 postulates a situation where a public servant renders any help or support both before or after commission of an offence by a member of an organized crime syndicate or abstains from taking lawful measures under this Act.

31 Interpretation clauses contained in Sections 2(d), 2(e) and 2(f) are inter-related. An 'organized crime syndicate' refers to an 'organized crime' which in turn refers to 'continuing unlawful activity'. As at present advised, it may not be necessary for us to consider as to whether the words "or other lawful means" contained in Section 2(e) should be read "*ejusdem generis*" / "*noscitur-a-sociis*" with the words (i) violence, (ii) threat of violence, (iii) intimidation or (iv) coercion. We may, however, notice that the word 'violence' has been used only in Sections 146 and 153A of the Indian Penal Code. The word 'intimidation' alone has not been used therein but only Section 506 occurring in Chapter XXII thereof refers to 'criminal intimidation'. The word 'coercion' finds place only in the Contract Act. If the words 'unlawful means' is to be widely construed as including any or other unlawful means, having regard to the provisions contained in Sections 400, 401 and 413 of the IPC relating to commission of offences of cheating or criminal breach of trust, the provisions of the said Act can be applied, which *prima facie*, does not appear to have been intended by the Parliament.

32 The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to

> prevent or control. In other words, an offence falling within the definition of organized crime and committed by an organized crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under the Indian Penal Code and other penal statutes providing for punishment of three years or more and in relation to such offences more than one charge-sheet may be filed. As we have indicated hereinabove, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA.
>
> 33 Furthermore, *mens rea* is a necessary ingredient for commission of crime under MCOCA."

29 The learned Senior Counsel submits that there are no allegations against the applicant API Vinod Dighore ascribing any specific role to him directly or indirectly. There is no role attributed to him even after the alleged commission of offence. The learned Senior Counsel has placed reliance on the judgment in the case of **State of Maharashtra and others Vs. Lalit Somdatta Nagpal and another**, reported in 2007 AIR SCW 1339; and has specifically referred to paragraphs no.61 to 66, which are as follows:

“61 However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the concerned authorities would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.

62 As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant case, both

Lalit Somdutt Nagpal and Anil Somdutt Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No.25/03 of Rasayani Police Station, Raigad, under Sections 468, 420, 34, Indian Penal Code and Sections 3, 7, 9 and 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23(1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdutt Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22nd August, 2005.

63 In addition to the above, a glance at the permission sought by P.I.L.C.B., Raigad, on 18th August, 2005 seeking permission for registering an offence under Section1(ii) MCOCA 1999 against Lalit Nagpal, Anil Nagpal, Kapil Nagpal and one

Parasnath Ramdular Singh will reveal that such permission was being sought for, as far s Kapil Nagpal is concerned, in respect of an offence allegedly under Section 63 of the Sales Tax Act, which in our opinion would not attract the provisions of the MCOCA.

64 We, therefore, have no hesitation in holding that as far as Kapil Lalit Nagpal is concerned, the provisions of the MCOCA have been misapplied to him.

65 Since we have already held that the limitation of the power to impose punishment only for a maximum period of two years for an offence under the 1981 Act did not preclude the authorities from applying the provisions of the MCOCA for offences under Sections 3 and 7 of the 1955 Act as well as the 1981 Act, we are left with the question as to whether the same had been applied to the case of Lalit Nagpal and Anil Nagpal strictly in accordance with the provisions of the MCOCA 1999. Having regard to the stringent provisions of the MCOCA, Section 23(1)(a) provides a safeguard to the accused in that notwithstanding anything contained in the Code of Criminal Procedure, no investigation of an alleged offence of organized crime under the MCOCA, 1999 can be commenced without the prior approval of a police officer not below the rank of Deputy Inspector General of Police. An additional protection has been given under Sub-section (2) of Section 23 which prohibits any Special Court from

taking cognizance of any offence under the Act without the previous sanction of a police officer not below the rank of Additional Director General of Police.

66 In the instant case, though sanction had been given by the Special Inspector General of Police, Kolhapur Range, on 31st August, 2004, granting permission under Section 23(1)(a) of the MCOCA 1999 to apply its provisions to the alleged offences said to have been committed by Anil Nagpal, Lalit Nagpal and Vijay Nagpal, such sanction reveals complete non-application of mind as the same appears to have been given upon consideration of an enactment which is non est. Even if the subsequent approval order of 22nd August, 2005 is to be taken into consideration, the organized crime referred to in the said order is with regard to the alleged violation of Sales Tax and Excise Laws, which, in our view, was not intended to be the basis for application of the provisions of the MCOCA 1999. To apply the provisions of MCOCA something more in the nature of coercive acts and violence is required to be spelt out so as to bring the unlawful activity complained of within the definition of "organized crime" in Section 2(a) of MCOCA."

30 The learned Senior Counsel submits that there is no role attributed to the applicant API Vinod Dighore nor any allegations about abetment are made against him. There is no previous charge sheet against the applicant in respect of any

crime which would attract provisions of Section 23 of the MCOC Act. There is no previous sanction granted by the Special Inspector General of Police for registering the offence under the provisions of MCOC Act against the present applicant API Vionod.

31 I have carefully gone through the statements of the informant. It is shocking that before the informant has disclosed about the threats extended to him by co-accused gang leader Harvindersingh @ Rindha, applicant API Vinod, on his own, has made a phone call to the informant making a query with him as to whether he has received call on his mobile giving threats from co-accused gang leader Harvindersingh @ Rindha. It is equally surprising that the applicant, who is holding a responsible post in the police department, instead of directing registration of the crime and taking any preventive steps, called the informant in the house of co-accused applicant Virendra for "settlement" talk. It is difficult to understand the meaning of "settlement". The informant must have been frightened by the threatening calls for demand of ransom Rs.One crore as also that after receiving said call in the night, the applicant API Vinod Dighore has called him asking him about the details of the threatening calls and after arranging meeting for "settlement". I have gone through the statements of the witnesses from page nos.53, 124, 75, 80, 99

and 114 to 120. There is also confessional statement of applicant-accused Gurucharansingh. *Prima facie*, there is evidence about assisting the organized crime syndicate which includes communication and association. Thus, *prima facie*, there are reasons to believe that the applicant-accused API Vinod Dighore is engaged in assisting the organized crime syndicate.

32 In the case of **Vinod G. Asrani Vs. State of Maharashtra**, reported in 2007 AIR (SC) 1253, the Hon'ble Supreme Court had an occasion to consider the scope of Section 23(1)(a) of the MCOC Act. In paragraphs no.8 and 9 of the judgment, the Hon'ble Supreme Court has made following observations:

> "8 We have carefully considered the submissions made on behalf of the respective parties and the relevant provisions of MCOCA and we are of the view that the High Court did not commit any error in dismissing the petitioners writ application. We are inclined to accept Mr.Altaf Ahmed's submissions that non-inclusion of the petitioner's name in the approval under Section 23 (1) (a) of MCOCA was not fatal to the investigation as far as the petitioner is concerned. On the other hand, his name was included in the sanction granted under Section 23 (2) after the stage of investigation into the complaint where his

complicity was established. The offences alleged to have been committed by the petitioner has a direct bearing and/or link with the activities of the other accused as part of the Chhota Rajan gang which was an organized crime syndicate.

9 As pointed out by Mr. Ahmed, this Court in the case of Kari Choudhary Vs. Mst. Sita Devi & Ors., (2002) 1 SCC 714, had while considering a similar question observed that the ultimate object of every investigation is to find out whether the offences alleged to have been committed and, if so, who had committed it. The scheme of the Code of Criminal Procedure makes it clear that once the information of the commission of an offence is received under Section 154 of the Code of Criminal Procedure, the investigating authorities take up the investigation and file charge sheet against whoever is found during the investigation to have been involved in the commission of such offence. There is no hard and fast rule that the First Information Report must always contain the names of all persons who were involved in the commission of an offence. Very often the names of the culprits are not even mentioned in the F.I.R. and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1) (a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the concerned authorities. Once such approval is obtained, an investigation is commenced. Those who are subsequently found

> to be involved in the commission of the organized crime can very well be proceeded against once sanction is obtained against them under Section 23 (2) of MCOCA."

33 It is, thus, clear that non-inclusion of the name in the approval under Section 23(1)(a) is not fatal to the investigation.

34 In the instant case, *prima facie*, the link is established and the applicant has direct or indirect bearing and/or link with the activities of the accused persons in the crime.

35 In the case of **Govind Sakharam Ubhe Vs. State of Maharashtra**, reported in 2009 All M.R. (Cri.) 1903, relied upon by the learned A.P.P., the Division Bench of this Court has discussed about the evidence where a group of persons – members of crime syndicate indulge in organized crime to gain pecuniary benefits and are continuing unlawful activity. Further, explaining the provisions of Section 2(1)(d) of the MCOC Act, the Division Bench has observed that nexus or link of person with organized crime is crux of term. In paragraphs no.35 to 37 and 39, the Division Bench has made following observations:

“35 It is now necessary to go to the definition of continuing unlawful activity. Section 2(1)(d) defines continuing unlawful activity to mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaking either singly or jointly as a member of an organized 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 ten years and that Court have taken cognizance of such offence. Thus, for an activity to be a continuing unlawful activity -

a) the activity must be prohibited by law;

b) it must be a cognizable offence punishable with imprisonment of three years or more;

c) it must be undertaken single or jointly;

d) it must be undertaken as a member of an organized syndicate or on behalf of such syndicate;

e) in respect of which more than one charge-sheet have been filed before a Competent Court.

36 The words in respect of which more than one charge-sheet have been filed cannot go with the words a member of a crime syndicate because in that case, these words would have read as in

respect of whom more than one charge-sheet have been filed.

37 But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines continuing unlawful activity sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may single as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by

the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. 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.

39 The submission on behalf of the appellant is that even though all the four accused namely, A, B, C and D may be members of the organized crime syndicate since against each of the accused not more than one charge-sheet is filed, it cannot be held that they are engaged in continuing unlawful activity as contemplated under Section 2(1)(d) of the MCOCA. Apart from the reasons which we have given hereinabove as to why such a construction is not possible, having regard to the object with which the MCOCA was enacted, namely to make special provisions for prevention and control of organized crime syndicate and for coping with criminal activity by organized crime syndicate, in our opinion, section 2(1)(d) cannot be so construed. Such a construction will defeat the object of the MCOCA. What is contemplated under section 2(1)(d) of the MCOCA is that activities prohibited by law for the time being in force which are punishable as described therein

> have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is *qua* the unlawful activities of the organized crime syndicate."

36 The Division Bench, in paragraph 39 of the judgment, has concluded the issue and observed that the requirement of one or more charge sheet is *qua* the unlawful activities of the organized crime syndicate. It is also observed that what is contemplated under Section 2(1)(d) of the MCOC Act is that the activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Thus, there is an unlawful activity committed by the organized crime syndicate and, therefore, the requirement of one or more charge sheet is *qua* the unlawful activities of the organized crime syndicate. *Prima facie*, the applicant-accused API Vinod Dighore appears to have assisted the unlawful activity of the organized crime syndicated led by gang leader co-accused Harvindersingh @ Rindha.

37 Learned Counsel Mr.Jadhav, appearing for applicant/accused-Gurucharansingh, submits that there is no evidence against the applicant. The applicant is not identified in the Test Identification Parade. The applicant allegedly made confessional statement to his inmate in Harsool Prison, however, it has no evidenciary value. The learned Counsel submits that though allegedly there is recovery of one country-made pistol and three live cartridges of KF 7.65 caliber from the applicant-Gurucharansingh, however, a bullet of 0.32 caliber was recovered from the informant's body. It further appears from the evidence collected by the Investigating Officer that the gun allegedly recovered from the applicant is capable of firing 7.65 caliber bullet. So far as gun recovered from co-accused Raju Raut is concerned, the same is capable of firing both i.e. 7.65 and 0.32 caliber bullets, respectively. The learned Counsel submits that merely on the basis of the observation at page no.68 pertaining to brushing marks of bullet from the applicant matches with the one recovered from the body of the informant, is so vague in nature to arrive at any conclusion. The learned Counsel submits that the ballistic report favours the applicant. Except the present crime, there is not a single crime registered against the applicant-accused Gurucharansingh.

38 On perusal of the supplementary statement of the informant, dated 06.01.2020, it appears that the informant, by referring to his meeting in the house of accused-applicant Virendra, as arranged by accused-applicant API Vinodh Dighore, explained that he became relaxed due to the so called settlement made. However, since he is not giving ransom, on the say of co-accused gang leader Harvindersingh @ Rindha, present applicant – Gurucharansingh fired gun shot on the informant. The witness at page no.40 has given reference of two persons came on motorcycle on the date of incident i.e. 16.08.2019 at about 4.30 p.m. According to this witness, the pillion rider was wearing a cap. Applicant-accused Gurucharansingh is identified in CCTV footage by another witness at page nos.47 and 49 and the same clothes, as described on the person of the pillion rider of the motorcycle, came to be recovered from accused-applicant Gurucharansingh. Witness at page no.49 has stated about the pistol in possession of accused-applicant Gurucharansingh and he was threatened by him at the point of gun. Even as per the statement of witness at page no.50, the applicant has made reki of the area surrounding the spot of incident prior to the incident. *Prima facie*, there is evidence, including involvement of accused-applicant Gurucharansingh in the commission of crime. In view of the

same, mainly on the ground of ballistic report, I am not inclined to give benefit to the accused-applicant Gurucharansingh.

39 Considering the entire aspects of the case, I do not think that any of the applicants have made out a case for grant of bail. There are serious allegations against all of them. *Prima facie*, there is a strong case against each of the applicants indicating their involvement in the commission of crime. There is strong possibility that after release on bail they will indulge in or commit similar offence.

40 Hence, the following order:

(i) All these four Bail Applications bearing Nos. (i) 850/2020, (ii) 1010/20, (iii) 895/2020 and (iv) 905/2020, are hereby rejected.

(V.K.JADHAV)
JUDGE

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