

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

**CRIMINAL APPLICATION (APL) NO. 254 OF 2020**

Vijay s/o Ratan Nagdeve,  
Aged about 26 years, Occ :  
Private, R/o House No.  
164/A/406, Kamgar Colony,  
Subhash Nagar, Hingna  
Road, Nagpur.

.... **Applicant**

- **Versus** -

(1) The State of Maharashtra,  
Through Police Station Officer,  
Sitabuldi Police Station,  
Nagpur.

(2) The State of Maharashtra,  
Through Assistant  
Commissioner of Police,  
Sitabuldi Division, Nagpur City,  
Nagpur.

.... **Non-applicants**

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Mr. U. P. Dable, Advocate for the applicant  
Mr. V. A. Thakre, APP for the State/non-applicants  
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**CORAM : ROHIT B. DEO, J.  
DATED : 22<sup>TH</sup> JANUARY, 2021.**

**ORAL JUDGMENT**

Heard.

2. With consent, the application is finally heard at the admission stage.

3. The applicant is invoking inherent powers under Section 482 of the Code of Criminal Procedure, 1973 (Code) seeking quashment of the order dated 20-9-2019 rendered by the Special Judge, MCOC Act, Nagpur in Misc. Criminal Application No. 867/2019 whereby the bail granted to the applicant is cancelled on the premise that offence punishable under Section 3 of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act' for short) is added.

4. In order to keep the record straight, it may be noted that the learned Special Judge further recorded a finding that the applicant committed breach of the condition of bail. The condition was that the applicant shall report at the police station every Wednesday, till the conclusion of the trial. In my considered view, assuming that the applicant did not report at the police station, on certain occasions, the drastic action of cancellation of bail cannot be justified. It is not clear from the order impugned, whether the applicant did not report at all or the default/s was an aberration.

5. Adverting to the merits of cancellation of bail, in my considered view, the order is unsustainable in law.

6. Perusal of the application seeking cancellation of bail would reveal that all that is said on behalf of the prosecution is that since Section 3 of MCOC Act is added pursuant to the approval dated 1-4-2019 accorded by the competent authority, the custody of the applicant Vijay is needed for further investigation. In the application, the prosecution contended that the accused is also involved in other offences and that there is possibility of pressurizing the prosecution witnesses. It would be apposite to cull out the justification spelt out by the prosecution in support of the application.

- (i) *That the I.O. wants to take the Non-applicants/accused in his custody for their house search.*
- (ii) *That, the investigating officer wants to carry out the detail investigation regarding the offences committed by them within preceding 10 years and wants to collect the certified copies of the said charge sheets.*
- (iii) *That the investigating officer wants to investigate whether the Non Applicants have purchased movable and immovable properties in their name or in the name of their relatives from the pecuniary gain earned by organized crime.*
- (iv) *Investigating officer wants to take the information regarding the bank accounts of the Non Applicants and also wants to collect statement thereof.*
- (v) *That the I.O. wants to investigate the facts that whether the accused person have purchased the movable or immovable properties and other luxurious articles from the amount earned by committing organized crime.*
- (vi) *That an information about the more associated accused who were possibly involved in the crimes is to be investigated.*

- (vii) *I.O. wants to collect the certified copies of the chargesheets, First Information Reports, Rojnamas etc. filed against the Accused persons.*
- (viii) *That the I.O. wants to investigate whether the accused have committed offences outside the jurisdiction of Nagpur District.*
- (ix) *That as the section 3 of MCOCA has been added therefore thorough investigation is required to be done and for that custody of accused is very much required and that could be possible if the bail granted to Accused is cancelled.*
- (x) *That Hon'ble Bombay High Court has settled the legal position that if any stringent provision is invoked against the accused persons then the bail can be cancelled. Here in this case, Sec. 3 of M.C.O.C. Act, which is severe law and stringent Provisions of the Act are attracted in this Crime, as per the rulings of Bombay High Court (**Sarang Arvind Goswamy -vrs- State of Mah., 2005(2) MHLJ 774 (BOM)**) Bail of non applicant may kindly be cancelled.*

7. The learned Special Judge was pleased to cancel the bail observing that :

6] *It is pertinent to note that MCOC Act, which is special Act came into force to curb and control menace of organised crime, to curb activities involving pecuniary gains of undue economic advantage by committing offence. On perusal of present application for cancellation of bail, it appears that same has been filed mainly on the ground that subsequent to the order of bail, an offence u/s. 3 of MCOC Act, 1999 has been added, considering the wide scope of MCOC Act, further investigation in respect of movable and immovable properties, bank accounts of applicant is necessary to ascertain pecuniary gain by applicant as well as organised crime syndicate.*

7] *It further appears that non-applicants have not attended police station regularly on each Wednesday till filing of charge*

sheet, as directed in the bail order. So, it appears that he committed breach of condition of bail order, dated 3.10.2018, in M.C.A. No.2414/2018. Considering the wider scope of investigation after application of MCOC Act, Investigating Officer should get sufficient opportunity to investigate the matter, otherwise whole purpose to apply the provisions of MCOC Act, would be defeated. Considering provision of section 21(2)(b) of MCOC Act and observation made in case of *Iqbal Hasan Kaskar vs. State of Maharashtra*, 2003 ALL M.R. (Cri.) 1817, Investigating Officer can seek custody of accused during the period of 30 days at any point of time till framing of charge.

8] It is profitable to see the case of *Sarang Arvind Goswamy vs. State of Maharashtra*, 2005(3) Mh.L.J. 774, in which similar point is decided by the Hon'ble High Court. In the said Judgment, it is held that considering subsequent development of the case, considering the stringent provisions of MCOC Act and considering the necessity of law, Court can cancel the bail granted to accused. Hon'ble High Court further observed that earlier bail, granted in offence under Indian Penal Code and under the Arms Act, will be of no use after application of provisions of MCOC Act, as applicant can be released on bail only if he is satisfy the rigours of the provisions of special enactment of MCOC Act.

9] In the present matter, provisions of MCOC Act have been applied after grant of bail to non-applicant and investigation is going on. Moreover, non-applicants committed breach of condition of bail order, as discussed above. There are subsequent developments after grant of bail to the non-applicants, which provide sufficient grounds for cancellation of bail. It is pertinent to note that when provisions of MCOC Act are applied in present case, non-applicants/accused can be released on bail considering not only their role in the present crime but also as a member of organised crime syndicate that too, after considering rider mentioned in section 21(4) of MCOC Act.

8. The statement of law that the entitlement to bail shall have to be tested on the anvil of the provisions of Section 21(4) of MCOCA Act, as a proposition of law is unexceptional. It is equally well settled that the restriction on the power of the Court to grant bail cannot be stretched to the extent of assuming that the accused must be called upon to demonstrate that he shall inevitably be acquitted. While the case which is required to be demonstrated goes beyond a *prima facie* case, the test stops short of proof of acquittal. It would suffice if on broad probabilities, the Court is of the view that there are reasonable grounds to believe that the prosecution under MCOCA Act may not culminate in conviction. It would be relevant to note the following observations of the Apex Court in **Ranjitsing Brahmajetsing Sharma Vs. State of Maharashtra and anr. [2005(5) SCC 294]**.

*38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even*

*likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.*

9. Testing the entitlement to bail on the anvil of the provisions of Section 21(4) of MCOC Act and the articulation of law supra, I am of the considered view that reasonable grounds exist to take a view that the prosecution may not culminate in conviction under the MCOC Act.

10. The very applicability of the MCOC Act is in serious doubt. The previous two offences which are registered against the

applicant vide Crime 117/2017 and Crime 179/2018 are of offences punishable under Section 376 of IPC read with provisions of the Protection of Children from Sexual Offences Act and certain bailable provisions of the Indian Penal Code respectively. Assuming that the charge-sheets are filed qua the aforesaid two crimes, it cannot be said on the strength thereof that the applicant is indulging in continuous unlawful activity by use of violence or threat of violence or intimidation or coercion or other unlawful means with the objective of gaining pecuniary benefits. Notably, the latter crime is not punishable with imprisonment of three years.

11. I am conscious of the judicial opinion that it is not necessary for the prosecution to demonstrate that more than two charge-sheets are filed in the preceding ten years against an individual member of the crime syndicate and the said requirement is not qua an individual but is qua the syndicate. However, the prosecution, then would have to demonstrate such nexus between the applicant-accused and the crime syndicate as would give rise to a reasonable inference of the applicant being a member of the crime syndicate. I have perused the material made available, *inter alia*, the

sanction order and the documents enclosed therewith and in my considered view, at this stage, it cannot be said that the applicant is a member of the crime syndicate. This of course is an observation made for the limited purpose of testing the order of cancellation of bail and it would be ultimately for the Special Judge to take a call.

12. The order impugned is quashed. The application is allowed in terms of prayer clause (i) which reads thus :

(i) Quash and set aside the order dated 20.09.2019 passed by learned Special Judge M.C.O.C. Act, Nagpur in Misc. Cri. Application No. 867/2019 or in alternate direct the learned Special Judge M.C.O.C. Act, Nagpur to decide the Misc. Cri. Application No. 867/2019 afresh;

13. The application is allowed in the aforestated terms.

**JUDGE**

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