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

CRIMINAL APPLICATION (BA) NO. 641 OF 2021
(Ashishkumar s/o Arunkumar Pande and another ..vs.. State of Maharashtra, through PSO, PS Ramnagar, District Gondia)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. R.K. Tiwari, Counsel for the applicants,
Mr. M.K. Pathan, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATED : 18-11-2021

The applicants are seeking bail in connection with Crime 320/2020 registered with Ramnagar Police Station, District Gondia, initially for offences punishable under Sections 307, 326, 364-A, 397, 120-B of the Indian Penal Code (IPC) and Section 4/25 of the Indian Arms Act. During the course of investigation, offence under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act (MCOC Act) are invoked.

2. The crime is registered on the basis of complaint lodged by Mr. Amar Gandhi and the applicants are arrested on 21-12-2020. The prosecution case, in brief, is thus :

(i) Applicant 2-Amit Pande was working as Clerk at the Chandrabhagabai Shantiben School managed by Mr. Amar Pande and his brother. Applicant 2-Amit Pande allegedly resigned and demanded Rs.10,00,000/- (Rupees Ten Lac) from Mr. Amar Gandhi. Allegedly, the said demand was made on the premise that substantial amount will be paid to the management by the person appointed in the vacancy created due to applicant 2-Amit Pande leaving the employment. It is further alleged that co-accused Raju Dubey, who is allegedly the leader of an organized crime syndicate, pressurized Mr. Amar Gandhi to pay applicant 2-Amit Pande the amount of Rs.10,00,000/- (Rupees Ten Lac).

(ii) It is alleged that between 6.25 to 7.20 p.m., on 09-10-2020 Mr. Amar Gandhi had gone to Radhe Supermarket to purchase grocery. Raju Dubey with few henchmen accosted Mr. Amar Gandhi and started assaulting him with fists and kicks and iron rod allegedly declaring that he is being taught a lesson since he did not pay applicant 2-Amit Pande the amount of Rs.10,00,000/- (Rupees Ten Lac). The miscreants allegedly took Mr. Amar Gandhi from the grocery shop to the house of Raju Dubey and confined him to a room. According to Mr. Amar Gandhi, when he was taken in the room, he noticed the applicants Ashishkumar Pande and Amit Pande. It is alleged that applicant 2-Amit Pande threatened Mr. Amar Gandhi that if the amount of Rs.10,00,000/- (Rupees Ten Lac) is not paid then and there, he and his family shall be killed. It is then alleged that Mr. Amar Gandhi was forced to telephonically call his brother Prince. The younger brother of Mr. Amar Gandhi, Prince, came to the house of Raju Dubey and he too was assaulted.

3. During the course of hearing, the learned Counsel for the applicants submitted that the provisions of the MCOC Act could not have been invoked and, therefore, the entitlement to bail will have to be scrutinized and tested on the anvil of Section 439 of the Criminal Procedure Code, 1973 (Code) and the stringent twin conditions in Section 21(4) of the MCOC Act would not apply. The learned Additional Public Prosecutor Mr. M.K. Pathan seriously rebuts the said submission.

4. Mr. R.K. Tiwari's submission that *prima facie* the provisions of the MCOC Act would not be attracted is on the premise that the applicants have no criminal antecedents and that while Raju Dubey and some co-accused may have formed an organized crime syndicate, and may have several offences registered, the applicants are not arraigned as accused in the offences allegedly committed by the organized crime syndicate. It is further submitted, that it is not even the case of the prosecution, that the applicants have any nexus with the offences committed by the organized crime syndicate or that the incident in relation to which the substantive offence is registered, is in any manner connected with the criminal antecedents of the organized crime syndicate members. Mr. R.K. Tiwari would heavily rely on the observations of the Apex Court in ***Prasad Shrikant Purohit v. State of Maharashtra and another, 2015 ALL MR (Cri) 2853 (SC)***, in support of the submission that since the applicants are not shown to be involved in any of the criminal

antecedents of the alleged organized crime syndicate, and as there is incontrovertibly no nexus alleged between the present offence and the cases earlier registered against the members of the organized crime syndicate, the applicants could not have been roped in under the MCOC Act.

5. Brief reference to the basic facts in *Prasad Shrikant Purohit v. State of Maharashtra and another* is in order. A bomb blast at Malegaon took place on 29-9-2008 in connection with which Crime 18/2008 was registered and one Rakesh Dhawade was arrested on 02-11-2008. Prasad Shrikant Purohit was arrested on 05-11-2008 and the provisions of the MCOC Act were invoked during the course of investigation. Earlier there was a bomb blast at Parbhani on 21-11-2003 and at Jalna in 2004, in connection with which Rakesh Dhawade was arraigned as accused and a supplementary charge-sheet was filed against him. Prasad Shrikant Purohit was not an accused either in the Parbhani or then the Jalna bomb blast case.

The Apex Court held that in so far as Rakesh Dhawade is concerned, since he had nexus with all the three crimes registered in connection with the bomb blasts at Parbhani, Jalna and Malegaon, the provisions of the MCOC Act are clearly attracted. In so far as Prasad Shrikant Purohit is concerned, in paragraph 99 of the report, the Apex Court held that no nexus is established with the earlier bomb blasts at Parbhani and Jalna and, therefore, his entitlement to bail is required to be considered *de hors* the stringent conditions incorporated in Section 21(4) of the MCOC Act and on the touchstone of Section 439 of the Code.

The Apex Court referred to its earlier decision in ***State of Maharashtra & Others v. Lalit Somdatta Nagpal & Another, (2007) 4 SCC 171,*** and in paragraph 87 of the report observes thus :

> *"87. When we refer to the said line of reasoning stated therein, we find that in the case of one accused, namely, one Kapil Nagpal, since he was not shown to be involved in any of the earlier cases, his case required to be dealt with differently and he cannot be said to have been involved in any continuing unlawful activity. We do not find any other specific reason for excluding him."*

6. Illuminating are the observations of the Apex Court in the passages reproduced below :

> *"90. Having regard to the said legal position with reference to the requirement to be fulfilled in respect of an 'organized crime' with particular reference to the past two instances and the present one in order to find out as to whether a person was involved in a 'continuing unlawful activity', when we refer to the facts before us, in the case on hand insofar as A-7 Rakesh Dattaray Dhawade is concerned, he has been charge-sheeted in Parbhani, Jalna as well as, the Malegaon bomb blast. The materials available on record disclose that he furnished certain materials at the asking of the prime accused involved in Parbhani and Jalna, which also related to bomb blasts in both the places. Going by the charge-sheet filed against A-7 in Malegaon his direct involvement has been*

alleged. A conspectus consideration of the above facts discloses that insofar as A-7 was concerned, he had a nexus with the member of an 'organized crime syndicate' and also had every nexus with the offence in the nature of an 'organized crime' of the two earlier cases, namely, Parbhani and Jalna and also direct involvement in the present bomb blast at Malegaon. In such circumstances, there is no difficulty in coming to a definite conclusion that insofar as, A-7 is concerned, his activity and involvement in all the three occurrences, namely, Parbhani, Jalna and Malegaon disclose nexus with the crime and also with the other accused involved in the crime and thereby the satisfaction of the definition of 'continuing unlawful activity' of an 'organized crime' on behalf of an 'organized crime syndicate' is satisfactorily shown. In such circumstances, by virtue of Section 21(4) of MCOCA he is not entitled for the grant of bail and that he does not fall within the excepted category stipulated in sub-clause (a) or (b) of the said sub-Section (4) of Section 21.

91. Having stated the said position relating to A-7, when we come to the case of others, there is no dispute that in respect of other appellants, their involvement is with reference to the present occurrence, namely, Malegaon bomb blast. Admittedly they are not proceeded against for the offence relating to Parbhani and Jalna. But still at the present juncture, with the materials available on record as on date, we are not in a position to ascertain as to the involvement of the appellants either by way of their nexus with any accused who is a member of an 'organized crime syndicate' or such nexus with the offence of an 'organized crime' which pertains to Parbhani and Jalna. We cannot also rule out the possibility of the evidence based on the investigation by the prosecuting agency to come out with reliable materials in support *of such nexus to be shown with an accused or with the crime in respect of the earlier two cases, namely, Parbhani and Jalna. We cannot, therefore, declare to the extent as was done by the Special Judge in the order dated 31.07.2009 to straightway reach at a conclusion to the effect that MCOCA was not attracted and, therefore, they should be discharged.*

92. But, for the purpose of the requirement under Section 21(4)(b) having regard to the absence of any material as on date to disclose any nexus with the accused of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime', in Parbhani and Jalna as of now we can state that in respect of appellants other than A-7 i.e. appellant in Criminal Appeal No.1971/2010, their application for bail can be considered by the Special Court. Therefore, on this issue, namely, in all cases same gang must be involved, our answer is to the above limited extent based on the earlier statement of law as declared in Ranjitsing Brahamjeetsing Sharma, (2005) All MR (Cri) 1538 (SC) (supra) in paragraph 31.

99. In the light of our above conclusions on the various submissions, we are convinced that in respect of the appellant in Criminal Appeal No.1971/2010, namely, A-7, there is no scope even for the limited purpose of Section 21(4)(b) to hold that application of MCOCA is doubtful. We have held that the said appellant A-7 had every nexus with all the three crimes, namely, Parbhani, Jalna and Malegaon and, therefore, the bar for grant of bail under Section 21 would clearly operate against him and there is no scope for granting any bail. Insofar as the rest of the appellants are concerned, for the purpose of invoking Section 21(4)(b), namely, to consider their claim for bail, it can be held that for the present juncture

> *with the available materials on record, it is not possible to show any nexus of the appellants who have been proceeded against for their involvement in Malegaon blast with the two earlier cases, namely, Parbhani and Jalna. There is considerable doubt about their involvement in Parbhani and Jalna and, therefore, they are entitled for their bail applications to be considered on merits."*

What is held by the Apex Court that if the accused has no nexus with the past unlawful activities of the organized crime syndicate, invoking of the provisions of the MCOC Act would be arguable.

7. In my considered, albeit *prima facie* view, considering the articulation of the Apex Court in *Prasad Shrikant Purohit v. State of Maharashtra and another*, the entitlement to bail in the present case shall have to be tested independently of the provisions of the MCOC Act and on the touchstone of Section 439 of the Code.

8. In so far as the involvement of the applicants in the substantive offence is concerned, while I am not inclined to minutely evaluate the material on record, it must be noted that the version of Mr. Amar Gandhi that the applicants were present in the room at the residence of the alleged gang leader Raju Dubey, is belied by the material on record. At this Stage, even if the case of the prosecution is accepted at face value, to the extent that the applicants sought the assistance of Raju Dubey to recover certain amount which the applicants perceived to

be recoverable from Mr. Amar Gandhi, the role of the applicants in the alleged abduction and assault is certainly blurred. Moreover, the existence of a strong *prima facie* case, assuming that there is a strong *prima facie* case, is not necessarily decisive. The applicants do not have criminal antecedents and are not likely to flee away from the course of justice. There is no likelihood of an early trial. In this view of the matter, continue incarceration shall be a pre-trial punishment.

9. The applicants have made out a case for grant of bail.

10. The application is allowed.

11. Applicant 1-Ashishkumar s/o Arunkumar Pande and applicant 2-Amit s/o Arunkumar Pande are released on bail in connection with Crime 320/2020 registered with Ramnagar Police Station, District Gondia for offences punishable under Sections 307, 326, 364-A, 397 and 120-B of the Indian Penal Code, Section 4/25 of the Arms act and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, subject to following conditions :

(i) The applicants shall furnish PR Bond of Rs.25,000/- (Rupees Twenty Five Thousand) each and furnish solvent surety for like amount.

(ii) The applicants shall attend Police Station, Ramnagar, District Gondia as and when required by the Investigating Officer.

(iii) The applicants shall attend each date of hearing scrupulously.

(iv) The applicants shall not make any attempt to influence or pressurize the witnesses.

(v) The applicants shall not leave the country without the permission of the trial Court.

JUDGE

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