

2] Heard learned counsel Ms.Misbah Solkar for the Applicant. She would submit that on perusal of the charge-sheet , it can be revealed that there is no evidence against the Applicant to come to a conclusion that there are reasonable grounds to believe that he is guilty of the offences with which he is charged and particularly MCOC Act. It is submitted that since no role has been attributed to the present Applicant in the alleged assault on the deceased, the prosecution case is falsified and create doubt about the presence of the Applicant on the spot and his involvement in the alleged crime. She would submit that the Applicant was sleeping inside the grocery shop, but has been falsely implicated on account of past rivalry.

It is also submitted that since there are no antecedents attributed to the Applicant and commonality is not established with the Gang Leader, even invocation of provisions of MCOC Act against the present Applicant is without any justification. Mere acquaintance of the Applicant with the main accused is not sufficient, according to the learned counsel to indict him as a member of an organized crime syndicate.

It is, therefore, prayed that the Applicant deserve his release on bail, though he may take consequences on being tried for the offence with which he is charged.

3] Per contra, the learned APP would vehemently oppose the application by relying on the Affidavit filed by the Assistant Commissioner of Police dated 31.03.2022 and it is submitted that charge-sheet under MCOC Act is filed against the present Applicant and other 7 accused persons. Referring to the prosecution case, the learned APP would submit that the gang leader Rashid Shaikh is a habitual offender and he is accused of committing various offences

alongwith different associates and his modus operandi is not to repeat offence with any person. It is stated that more than two charges are filed against the gang leader in cognizable offences punishable for 3 years and the offences are bodily offences and involving property. Reference is made to the statement accused No.4 and 7 recorded under Section 18 of the MCOC Act and also to statements of two witnesses recorded under Section 164 of the Cr.P.C.

4] The subject CR came to be registered on the complaint filed by Hasina Bano Shaikh, who alleged that her brother Khudabaksh Shaikh has two sons Abdul Rehman and Abdul Karim and six months prior to the occurrence of the offence, there was quarrel between her nephews and one Rashid Shaikh, which resulted into prosecution. In order to avoid further confrontation, according to the complainant, her brother had shifted to Ulve, Navi Mumbai.

As per prosecution, on 17.11.2020 main accused, Rashid Shaikh abused and threatened the complainant's son Abdulla Shaikh. Therefore NC came to be registered. The complainant's nephew Abdul Karim came to 'B sector, Chita Camp', where he was apprised of the incident of Rashid Shaikh abusing and threatening Abdulla. It is alleged that aunts of Rashid Shaikh viz. Fajjo and and Shabbo and other people indulged in quarrel with Abdul Karim, but he ran away from the place. At around 3.20 hours both the nephews of the complainant came to the grocery shop of Shabana Shaikh and started abusing. As Arbaz used to sleep in grocery shop, Abdul Rehman and Abdul Karim started banging the closed shutter of the shop. It is alleged that the complainant and her daughter Ruksana tried to pacify them and at that time Rashid Shaikh, Salman Sayyed Ali Shaikh, Javed, Sameer and Arbaz arrived at the spot with deadly weapons. It

is alleged that Rashid Shaikh assaulted with sword on the neck of Abdul Karim @ Dubai AKram and on the head of Abdul Rehman @ Wasim, while, Salman assaulted Abdul Rehman with iron rod and other accused assaulted Abdul Rehman with fist and blows. The complainant and her daughter tried to intervene, but Rashid and his associates even assaulted her and therefore she ran inside her house and closed the door. However, associates of Rashid Shaikh did not stop abusing and broke window panes of the house of complainant. Police reached the spot and Vasim was found lying in pool of blood. He was shifted to Lokmanya Tilak Hospital where he succumbed to the injuries.

On the basis of statement of complainant the subject CR i.e. CR No.332/2020 came to be registered and the accused persons came to be arrested on different dates. The weapons used in the assault were seized and statements of two eye witnesses are also recorded.

5] As far as the present Applicant is concerned, he is arraigned as Accused No.3 and in the charge-sheet his role has been collectively referred to alongwith other accused persons of assaulting the nephew of the complainant, Abdul Karim Khudabaksh Shaikh by sword, wooden and iron rod, stump, wooden rod and fist blows. They are also accused of causing injuries to his younger brother Abdul Karim and to the complainant and her daughter. The charge-sheet allege that the head of the Gang, Rashid Shaikh has committed offences for benefit of himself and benefit of his associates as an organized crime syndicate and i.e. how the offence under MCOC Act is invoked in the subject CR. The CCTV footage of the spot has been obtained and compiled in the charge sheet.

6] Statement of the witnesses compiled in the charge sheet has attributed general role to the present Applicant. When the learned APP is asked about commonality of the offences so as to invoke the provisions of MCOC Act, she state that there is no offence which is common between the Applicant and the gang leader.

The observations of the Hon'ble Apex Court in the case of State of Maharashtra vs. Lalit Somdatta Nagpal, (2007) 4 SCC 171, are very relevant and are reproduced on page 30, as below :

“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 and 34, Indian Penal Code](#) and [Sections 3, 7,9 & 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 22-8-

2005.”

7] The charge-sheet did not point out any material to show that the Applicant is a member of the crime syndicate.

8] In the light of above observations, co-accused Shabana Shaikh is released on bail by the Division Bench of this Court in WP No. 1959 of 2021 with the following observations.

21. We have adverted to the FIR lodged by the informant, elaborately. It is pertinent to note that in the FIR, the petitioner was not named as one of the assailants or even the person who accompanied the assailants. In the supplementary statement recorded on 17th November, 2020, the petitioner was named as the member of the second group which rushed to the scene of occurrence after Rashid (A1) and his associates mounted the murderous assault upon the deceased Wasim. Second group also allegedly assaulted Wasim, the deceased. In a further supplementary statement of the first informant recorded on 6th December, 2020, the first informant named two persons who were stated to be the unknown members of the second group in the first supplementary statement dated 17th November, 2020. In the second supplementary statement dated 6th December, 2020, the petitioner was again attributed the role of having assaulted the deceased by fist and kick blows.”

9] Further observations in Para 23 are also equally applicable to the present Applicant, who submitted that he was sleeping in the grocery shop and did not participate in the incident.

“23. The aforesaid statements, even if taken at their face value, prima facie do not indicate that the petitioner entertained the common object with which the unlawful assembly was animated. The time and place of the occurrence cannot be lost sight of. Nor the prelude thereto can be ignored. From the own showing of the first informant, the deceased Wasim and Akram,

had gone in front of the grocery shop of the petitioner at the dead of night i.e. 3.30 am. and started hurling abuses at the petitioner; the reason being the petitioner's relationship with Rashid (A1). Since the son of the petitioner Arbaj used to sleep in the said grocery shop, Wasim and Akram banged the shutter of the grocery shop. The first informant and her daughter were trying to pacify the Wasim and Akram. At that time, the assailants led by Rashid (A1) allegedly came thereat armed with the weapons and assaulted Wasim and Akram.

10] The presence of the Applicant at the scene of occurrence after the commotion do not incriminate him as according to the prosecution the deceased and Akram were banging shutter of the grocery shop where the applicant was sleeping.

11] On being prima facie satisfied that the provisions of MCOC Act would not be invoked against the present Applicant by accusing him as being a member of the organized crime syndicate, the Applicant deserve his release on bail since he is a young boy and there are no antecedents to his credit nor the prosecution apprehend that he is a flight risk and will not be available for trial.

12] The observations made above are prima facie in nature and limited for the purpose of determination of the present Applicant and the learned Judge trying the Applicant for the offence, with which he is charged, shall not, in any manner, be influenced by the above order.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Faisalullah Inayathullah Shaikh shall be released on bail in connection with C.R.No.I-332 of 2020 registered at Trombay Police

Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall report to the concerned Police Station on first Monday of trimester between 10.00 a.m. to 12.00 noon.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]