

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3086 OF 2021

Pilya @ Mahesh Ananda Parche ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Kedar Patil a/w Mr. Jitesh Mundhawa, Gargi Joshi, Sakshi
Kadam, for the Applicant.

Mr. P.H. Gaikwad, APP for the State/Respondent.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 12th July, 2022

PRONOUNCED ON : 22nd July, 2022

ORDER:-

1. The applicant Pilya @ Mahesh Ananda Parche, who is arraigned in C.R. No.209 of 2019, registered with Miraj Rural Police Station, for the offences punishable under Section 307, 324, 143, 145, 147, 148, 149 and 504 of Indian Penal Code, 1860 (“the Penal Code”) and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (“the MCOC Act”), has preferred this application to enlarge him on bail.

2. The prosecution case runs as under:

On 24th April, 2019, at about 9.00 pm., Akshay Jagtap (the first informant) and his associates visited a pan stall near hotel Delight, Kavlapur, Sangli. Six persons including the applicant were standing thereat. Accused No. 1 Rahul alias Bhaiya Mane is

a gangster. He is a leader of the gang of which the applicant and other co-accused are the members. Thus, the first informant and his associates had known those persons. While the first informant and his associate Amit were returning to the spot where they had parked the motorcycle, after collecting the pan, the applicant and co-accused including accused No. 1 Rahul alias Bhaiya Mane started abusing them, and charged on them. They started to beat first informant by fist and kick blows. First informant's friend Avdhut Jadhav came to his rescue. Thereupon, one of the co-accused Pakya Jahannavar gave a blow by means of stone on the head of Avdhut. Applicant took out a knife and stabbed the first informant in the stomach. Other friends of the first informant came to their rescue. After a while, the assailants went away from the said spot. Thereafter, the first informant approached Miraj Rural Police Station and lodged the report.

3. During the course of investigation, it transpired that the accused were indulging in continuous unlawful activities. Rahul alias Bhaiya, accused No. 1, was the leader of the gang. The applicant and other co-accused were the members thereof. The accused committed offences as the members of organized crime syndicate. Post approval under Section 23 (1)(a), offences punishable under MCOC Act, 1999 were added. Eventually, post

previous sanction by the competent authority, cognizance of the offences under Section 3 (1)(ii), 3(2), 3(4) of the MCOC Act, 1999, has been taken.

4. The applicant has preferred this application contending *inter alia* that there is no material to show that the applicant is a member of the organised crime syndicate and the offences, which have been arrayed against the applicant, were committed as member of the organised crimes syndicate. The nexus between the applicant and the subject offence cannot be said to have been established. Nor the discovery which the applicant has allegedly made leading to the recovery of the knife can be fastened against the applicant. Moreover, the applicant is in custody since 29th May, 2019. Trial has not yet commenced. It is very unlikely that the trial can be completed within a reasonable period. Therefore, the applicant deserves to be enlarged on bail.

5. An affidavit-in-reply is filed by the respondent resisting the prayer for release on bail. The substance of the resistance put-forth by the prosecution is that there is direct evidence of murderous assault by means of deadly weapon against the applicant. In fact the applicant is arraigned as the principal

assailant. In the context of the offences which the applicant and the other members, including the leader, of the organized crime syndicate, have committed, the invocation of the provisions of MCOC Act, 1999 is wholly justifiable. Apart from the offence in question, four serious offences have been registered against the applicant, of which the Courts have taken cognizance. Therefore, the bar under Section 21(4) of the MCOC Act, 1999 comes into play with full force.

6. I have heard Mr. Kedar Patil, the learned Counsel for the applicant and Mr. P.H. Gaikwad, the learned APP for the State, at some length. With the assistance of the learned Counsel for the parties, I have carefully perused the report under Section 173 of the Code and documents annexed with it.

7. Mr. Patil, the learned Counsel for the applicant, canvassed a two-fold submission. First, the invocation of the offence punishable under MCOC Act, 1999, is infirm as there is no allegation that the offences were committed by the applicant either single or jointly for pecuniary advantage. Therefore, the essential condition for invocation of MCOC Act, 1999, is not *prima facie* made out. Reliance was sought to be placed on a judgment of a learned Single Judge of this Court in the case of **Sanjay Vs. State**

of Maharashtra¹

8. Mr. Patil, the learned Counsel for the applicant, further submitted that the material on record does not indicate that the informant had sustained a grievous hurt. Moreover, Akshay Jagtap (the first informant) had narrated history of assault by unknown persons. Therefore, the offence punishable under Section 307 of Penal Code cannot be said to have been *prima facie* made out. In any event, since the applicant is in custody for more than three years and there is no likelihood of conclusion of trial, within a reasonable period, the applicant deserves to be enlarged on bail, submitted Mr. Patil.

9. Per contra, Mr. Gaikwad, the learned APP, for the State laid emphasis on the fact in the case at hand the bar under Section 21(4) of the MCOC Act operates, as ten crimes for serious offences have been registered against the gang leader Rahul alias Bhaiya Mane and five crimes have been registered against the applicant. In the backdrop of the aforesaid antecedents of the applicant and overwhelming material to show that the offences have been committed as organized crime, the interdict contained in Section 21(4) of the MCOC Act squarely applies qua the applicant and,

¹ 2006 ALL MR (Cri) 1001.

therefore, he cannot be released on bail, urged the learned APP.

10. To begin with, it may be apposite to consider the question as to whether the invocation of the provisions contained in MCOC Act is prima facie sustainable.

11. In the affidavit-in-reply, ten offences have been shown to have been registered against accused No. 1 Rahul Mane, the gang leader. They are tabulated as under:-

No.	C.R.No. & Police Station	Charges
1	61 of 2013 MIDC, Kupwad	394, 363, 504. 506 read with 34 of IPC
2	174 of 2013 Vishram Baug	323, 324, 504 of IPC
3	26 of 2014, MIDC, Kupwad	399, 398, 354(B), 323, 504, 506 of IPC and 4, 25 of Arms Act and sec. 142 of Maharashtra Police Act
4	85 of 2014, Jath Police station	392, 384 of IPC
5	35 of 2015, Hatkangale, Dist. Kolhapur	399 of IPC
6	131 of 2015, MIDC, Kupwad	4 read with 25 of Arms Act
7	280 of 2017, Miraj Gramin	302 and 212 read with 34 of IPC
8	5 of 2018, MIDC, Kupwad	302, 323, 504 of IPC
9	27 of 2019 MIDC, Kupwad	3 read with 25 of Arms Act
10	209 of 2019 Miraj Gramin	307, 324, 143, 147, 148, 149, 504 of IPC and sec.3(1)(ii), 3(2), 3(4) of MCOC Act.(i.e. present offence)

12. Qua the applicant, five crimes are shown to have been registered. The details are as under:-

No	C.R.No. and Name of Police station	Offences/Charges
1	34 of 2018 MIDC, Kupwad	323, 291, 160 of IPC and sec. 135 of Maharashtra Police Act
2	57 of 2018, MIDC, Kupwad	395, 397, 427 of IPC
3	164 of 2018, Miraj Gramin	395 of IPC
4	217 of 2018, Miraj City	395, 341 of IPC
5	209 of 2019, Miraj Gramin	307, 324, 143, 147, 148, 149 and 504 of IPC and sec. 3(1)(ii), 3(2), 3(4) of MCOC Act (i.e. present offence)

13. Without controverting the aforesaid antecedents of the alleged gang leader and the applicant, Mr. Patil laid emphasis on the fact that in the order granting prior approval under section 23(1)(a) of the MCOC Act dated 13th June, 2019, the competent authority recorded that the applicant and the co-accused were indulging in continuing unlawful activities for pecuniary advantage. The offences alleged against the gang leader and the applicant, including the subject offences, according to Mr. Patil, do not appear to have been committed to derive any pecuniary benefit or economic advantage. Therefore, the invocation of the provisions of a MCOC Act in a case involving an ordinary fight between two groups of persons is legally unsustainable, submitted Mr. Patil. Support was sought to be drawn from the following observations of learned single Judge of this Court, in the case of **Sanjay** (supra)

6] That leaves us with only two offences. In so far as

the offence vide Crime No.371 of 1999 is concerned, the present applicant is already acquitted of the said charges. The only case that can be taken into consideration for prima facie finding as to whether there exists a case for establishing the complicity of the present accused for the offence punishable under MCOC Act is for the Crime No.609/2000. Perusal of the charge would also show that the incident is also arising out of personal enmity between two groups. It is not the allegation of the prosecution that the said incident is with a motive of gaining pecuniary benefits or gaining undue economic or other advantage for the accused/applicant or for any other person or for promoting insurgency.

14. I have given anxious consideration to the aforesaid submission. I am unable to persuade myself to agree with the propositions sought to be canvassed by Mr. Patil. The reliance sought to be placed by Mr. Patil on the aforesaid observations is of no assistance as the position in law is settled by a Full Bench Judgement of this Court in the case of **State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and Another**². In the said case in view of a cleavage of opinion in the judgments of the Division Benches of this Court, the Full Bench considered the following question.

“Whether the term “other advantage” has to be read as *enjusdem generis* with the words “gaining pecuniary benefits, or gaining undue economic advantage or whether the said term “other advantage” is required to be given a wider meaning”.

² (2011)5 Mah LJ 386

15. After an elaborate analysis of the provisions contained in MCOC Act, 1999, its object and the precedents, the Full Bench was persuaded to hold that, “other advantage” cannot be read as *enjusdem generis* with the words “pecuniary benefits” or “undue economic advantage”.

16. The observations of the Full Bench in para Nos. 33 and 34 are instructive and hence extracted below:

33] It is pertinent to note that in both Statement of Objects and Reasons and the Preface, though certain activities have been mentioned the same are followed by the term "etc". It is, thus, clear that the activities mentioned in the Statement of Objects and Reasons and the Preface are only illustrative in nature and not exhaustive. It is, thus, clear that the legislative intent is not only to curb only the activities mentioned in the Statement of Objects and Reasons or Preface but to curb various other activities of the organised crime syndicate so that unlawful elements spreading terrorism in the society can be controlled to a great extent, with an intention that the feeling of fear spread in the society is minimized.

34] It can, thus, clearly be seen that the purpose behind enacting the MCOCA was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface, in our considered view, does not lead to any narrower meaning that MCOCA has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOCA is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be

placed is accepted, it will frustrate the object rather than curing the mischief for which the Act has been enacted.

17. In the light of the aforesaid enunciation of law, the endeavour on the part of the applicant to draw home the point that since the subject offences were not committed for pecuniary benefits or other economic advantage, the invocation of the MCOC Act, 1999 is not legally sustainable, does not merit countenance.

18. From the perusal of the material on record, especially the continuous course of violent and unlawful activities, for which crimes have been registered against the gang leader and the applicant, as is evident from the chart extracted above, prima facie an inference becomes sustainable that the applicant and the co-accused have indulged in continuous unlawful activities which are cognizable offences and entail more than three years imprisonment and the Courts have taken cognizance of those offences. The material on record also prima facie indicates that those offences have been allegedly committed singly or collectively as members of the organized crime syndicate. I am thus persuaded to hold that there is prima facie material to justify the invocation of MCOC Act, 1999.

19. Once a prima facie case for the offences punishable under MCOC Act, 1999 is made out, the interdict contained in section 21(4) of the MCOC Act, 1999 comes into play. The twin conditions are required to be satisfied before a person accused of an offence punishable under MCOC Act, 1999 is released on bail. First, the Court ought to form an opinion that the accused is not guilty of the offences. Second, the Court ought to be satisfied that the accused would not commit identical offences, if released on bail.

20. At this stage, the nature of the material pressed into service against the applicant in the subject crime assumes significance. The first informant and eye witnesses have consistently deposed that the applicant stabbed the first informant by means of knife. The statements of the first informant and eye witnesses have also been recorded under section 164 of the Code, before the learned Magistrate. They have reiterated that the applicant stabbed the first informant in the stomach.

21. Mr. Kedar Patil attempted to wriggle out of the situation by advancing a submission that in the injury certificate the injury suffered by the first informant has been designated simple. I have perused the injury certificate. The medical officer has recorded that the first informant Akshay Jagtap has sustained stab injury

at left side of lower chest. USG revealed lenier laceration. The first informant was admitted in hospital on 25th April, 2019 and discharged on 2nd May, 2019. In the aforesaid view of the matter the designation of injury as simple by the medical officer thus does not advance the cause of the applicant to the extent desired by the applicant.

22. In addition to direct ocular account, there is circumstantial evidence in the form of the recovery of knife pursuant to the discovery made by the applicant leading to recovery weapon of offence. The seizure memo dated 29th May, 2019 indicates that the applicant took out a knife which was in a buried state. The knife had blood stains.

23. Prima facie there is material to show the complicity of the applicant. In the face of such ocular account and circumstantial evidence, it would be impermissible to form an opinion that the accused is not guilty of the offences. To add to this, the antecedents of the applicant and the co-accused do not induce the necessary assurance to record an opinion even tentative, that the applicant would not indulge in identical offences if released on bail. Thus, neither of the twin conditions can be said to have been satisfied.

24. The upshot of the aforesaid consideration is that the bar under section 21(4) of the MCOC Act operates with full force. Therefore, despite the fact that the applicant has been in custody for more than three years, the applicant does not deserve to be released on bail.

Hence, the following order.

: ORDER :

- 1] The application stands rejected.
- 2] However, having regard to the fact that the applicant and the co-accused have been in custody for more than three years, the learned Special Judge seized with the MCOC Special Case arising out of C.R. No.209 of 2019, registered with Miraj Rural Police Station, is requested to make an endeavour to commence the trial, if not already commenced, and conclude the same as expeditiously as possible.
- 3] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]