

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

CRIMINAL APPLICATION (APPLN) NO. 48 OF 2021

(State of Maha., thr. Sub-Divisional Police Officer, Umarkhed

-Vs.-

Vaibhav @ Balu Subhash Wankhede)

AND

CRIMINAL APPLICATION (APPLN) NO. 49 OF 2021

(State of Maha., thr. Sub-Divisional Police Officer, Umarkhed

-Vs.-

Gokul Devanand Birla)

AND

CRIMINAL APPLICATION (APPLN) NO. 50 OF 2021

(State of Maha., thr. Sub-Divisional Police Officer, Umarkhed

-Vs.-

Dipak Prarkash Chavan)

AND

CRIMINAL APPLICATION (APPLN) NO. 54 OF 2021

(State of Maha., thr. Sub-Divisional Police Officer, Umarkhed

-Vs.-

Wasim Khan s/o Rashid Khan)

AND

CRIMINAL APPLICATION (APPLN) NO. 55 OF 2021

(State of Maha., thr. Sub-Divisional Police Officer, Umarkhed

-Vs.-

Vishal Raju Chavan)

Shri M.J. Khan, A.P.P. for Applicant/ State.

Sarvashri V.R.Thote, Mir Nagman Ali, P.V. Navlani, M.P. Kariya, Advocates
for the Non-applicants.

CORAM : **ANIL S. KILOR, J.**

DATED : **JUNE 13 2022**

ORAL ORDER :

1. All these applications, *inter alia*, are seeking cancellation of bail granted to the non-applicants in connection with Crime No.57 of 2021, registered for the offences punishable under Sections 307, 397, 395, 353, 332 of the Indian Penal Code and Section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as “MCOC Act”), hence, heard together.

2. Case of the prosecution is that a report was lodged by the complainant Gajanan Vitthalrao Suroshe, working as Talathi stating therein that he received secret information that some persons are illegally excavating sand from Vidul Khand-1 Nala. The complainant along with Naib-Tahsildar, Vaibhav Pawar after obtaining the orders from the Sub-Divisional Officer, Umarkhed proceeded towards the spot. While proceeding near Gawande College at around 23:20 hours, they saw one Tipper coming from the other side. They intercepted the said Tipper and upon inspection 2 Brass of sand was found loaded. The four unidentified persons in the said Tipper, out of them one unidentified person

called from his mobile phone to someone and informed that said Tipper is intercepted. After some time one white coloured four wheeler Car came from Umarkhed side. Four persons came out of the Car, out of them one person is Avinash Chavan R/o Umarkhed and 3 other persons were unidentified persons. Avinash Chavan (accused No.1) took out a knife and put on the chest of the complainant and forcibly snatched a mobile phone worth Rs.14,000/- and cash Rs.7,000/-. He threatened not to detain his vehicle and asked the driver to take Tipper and unload the sand. When Vaibhav Pawar objected, the accused No.1 assaulted him with knife upon the stomach of Vaibhav Pawar. Other unidentified persons along with accused No.1 assaulted the complainant and Vaibhav Pawar by means of fist and kick blows. Vaibhav Pawar was also assaulted by iron rod on his leg. The accused persons threatened the complainant and Vaibhav Pawar of dire consequences and left the spot. On the basis of said incident, the report was lodged by the complainant at Umarkhed Police Station. Upon receipt of the report, the Police Station, Umarkhed registered

First Information Report bearing No.57/2021, initially for the offences punishable Under Sections 307, 397, 395, 353 and 332 of the Indian Penal Code.

3. It is further submitted that during further investigation the provision of Sections 3(1)(ii), 3(2) & 3(4) of the Maharashtra Control of Organized Crime Act, 1999 came to be added in the present crime after obtaining approval dated 17/02/2021 from Deputy Inspector General of Police, Amravati Range as contemplated under Section 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999.

4. Upon registration of offence the Investigating Machinery was set into motion. The Investigating Officer during the investigation, visited the spot of incident and prepared Spot-Panchanama. During the course of investigation, the identity of unidentified accused persons were revealed.

5. During the investigation, the non-applicants filed independent applications under Section 439 of the Code of Criminal Procedure for grant of regular bail.

6. The prosecution resisted the applications moved by the respective non-applicants and prayed for rejection of the same.

7. The learned trial Court vide order dated 07/05/2021 allowed the bail applications and thereby granted bail to the non-applicants herein. The said order is sought to be cancelled by the present applications filed at the behest of the State.

8. I have heard learned A.P.P. for the State and the learned counsel for the respective non-applicants.

9. Shri Khan learned A.P.P. submits that the order passed by the learned Sessions Judge, granting bail to the non-applicants, is cryptic and passed mechanically. He, therefore, submits that in view of the judgment of the Hon'ble the Supreme Court of India

in the case of *Jagjeet Singh and others. ..vs.. Ashish Mishra and another*, reported in **AIR 2022 SC 1918**, the orders granting bail to the non-applicants, have to be set aside.

10. The learned A.P.P. further argues that the learned trial Court failed to consider the provision namely Section 21(4) of the MCOC Act which mandates that no person accused of an offence punishable under the provisions of the MCOC Act shall, if in custody, be released on bail or on his own bond, unless the Public Prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. Learned A.P.P. argues that the impugned order granting bail does not satisfy the mandate of Section 21(4) of the MCOC Act.

11. It is submitted that there are confessional statements of the co-accused which can be taken into consideration as per

provision of Section 18 of the MCOC Act. He further submits that the confessional statements sufficiently show that the non-applicants are the members of Organized Crime Syndicate and the main accused is the leader of the syndicate. He, therefore, submits that unless there is a compliance of Section 21(4), any bail granted needs to be cancelled.

12. The learned A.P.P. lastly, has drawn attention to the findings recorded by the trial Court while granting bail to the non-applicants and submits that in all the matters similar findings are recorded which show that there is no application of mind to the involvement of the each of the non-applicants in the alleged crime. Thus, he submits that as the learned trial Court has not applied its mind to individual case of the non-applicants and as no reasons are recorded qua the individual accused, the impugned order is cryptic and mechanical.

13. Shri Navlani, learned counsel for the respondent in Criminal Application No. 50 of 2021 argues that there is a

compliance of Section 21 (4) of the MCOC Act, though the learned trial Court did not record it elaborately. He therefore, submits that there is no error committed by the learned trial Court.

14. It is submitted that the learned trial Court has rightly recorded that nothing has been rightly pointed out that any charge sheet is pending against the applicant/respondent on the date of commission of the offence or on the date when the provisions of MCOC Act were invoked.

15. He further submits that the Court has rightly observed that no nexus has been shown that the respondent has committed crime previously with other accused involved in the crime. Thus, after considering the progress of the investigation, the bail was granted and no error has been committed by the learned trial Court.

16. The learned counsel for the respondent further argues that as looking to the allegations made in the FIR and the reply

filed before the trial Court, even though some findings are not recorded properly, however, the ultimate conclusion arrived at by the learned trial Court is sustainable in the eyes of law and therefore, it cannot be said that the impugned order is cryptic or mechanical. Accordingly the learned counsel for the non-applicants Shri Navlani prays for rejection of the application moved by the State, for cancellation of bail.

17. The learned counsel for the respective non-applicants in other applications reiterated the submissions of learned counsel Shri Navlani.

18. To consider the rival contentions of the parties, I have perused the case diary and also the impugned order granting bail to the non-applicants.

19. Before considering the submissions of the rival parties, I am of the opinion that it would be appropriate to refer to the

findings recorded by the learned trial Court while granting bail to the non-applicants, which reads thus:

“7. There is no mention in the reply that any Charge Sheet is pending against the applicant on the date of commission of offence or on the date when the provisions of MOCA were invoked. Applicant is 22 years old having no criminal antecedents. No nexus have been shown that he has committed crime previously with the other accused involved in the crime. Confessional statement of the applicant is already recorded and identification parade is also conducted. Prima faice there is no evidence that applicant along with the other accused or separately treating himself as a member of the gang committed any cognizable offence punishable for imprisonment of 3 years or more. So the ingredients of the offence has not been made out. In crime No.57/2021, investigation is over. Applicant is in custody from 02/02/2021. His further custody is not required. The trial is not likely to commence and conclude in the reasonable time. The presence of the applicant can be secured by imposing suitable conditions.”

20. The learned Sessions Judge while granting bail to the non-applicants, has recorded same findings as referred above except change in the age of the applicants. No separate reasons are recorded qua each accused, considering the role attributed to the each accused.

21. Section 21 of the MCOC Act mandates that no person accused of an offence punishable under MCOC Act shall, if in custody, be released on bail or on his own bond, unless the public prosecutor has been given an opportunity to oppose the application of such release and where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

22. In this case as I have observed that while granting bail the learned trial Court has reproduced the above referred paragraph in each of the case of the respondent. The language of Section 21(4)(b) of the MCOC Act suggests that the Sessions Court shall consider each case independently to arrive at a conclusion that the accused person is not guilty of such offence and that he is not likely to commit such offence while on bail.

23. The Hon'ble Supreme Court of India in the case of *Jagjeet Singh* (supra) has observed thus :

“31. The Court in Prasanta Kumar Sarkar went on to note:

“10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368], a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.” (Emphasis Supplied)

32. The aforestated principles have been affirmed and restated in a number of subsequent decisions, including in the recent judgments of Neeru Yadav v. State of U.P. & Anr., Anil Kumar Yadav v. State (NCT of Delhi) & Anr., and Mahipal v. Rajesh Kumar & Anr.”

24. In the teeth of above referred well settled principle of law and after considering the above referred findings recorded by the learned Sessions Judge while granting bail to the non-applicants, I have no hesitation to hold that the findings recorded by the learned Sessions Judge are cryptic and mechanical. Thus, the

said findings suffer from the vice of non-application of mind, rendering it to be illegal.

25. In that view of the matter, I am of the considered opinion that the impugned orders need to be quashed and set aside, for the reasons recorded herein above. Accordingly, I pass the following order:

- (a) The applications are allowed.
- (b) The impugned orders dated 07/05/2022 in Misc. Criminal Application No.24/2021 & Misc. Criminal Application No.31/2021, order dated 03/06/2021 passed in below Exh.49 in Crime No.57 of 2021, order dated 07/05/2021 in Misc. Cri. Application No.27/2021 and order dated 02/06/2021 passed below Exh.18 in Crime No.57/2021, are hereby quashed and set aside.
- (c) The bail granted to the non-applicants is hereby cancelled.
- (d) The bail bonds of the non-applicants are cancelled sureties are released.

26. At this stage learned counsel for the respective non-applicants submit that the non-applicants are on bail for about one year and there is no complaint of abuse of concession. Accordingly, it is prayed that they may be granted protection for a period of 15 days so as to enable them to move an application afresh for grant of regular bail.

27. The learned A.P.P. strongly opposed the prayer for grant of protection and in alternative submits that if this Court is intended to grant protection, it may not be more than 10 days.

28. There is no dispute that the non-applicants are on bail from last about one year and there is no complaint about abuse of concession by the non-applicants. Moreover, the orders granting bail are cancelled on the ground that the order is mechanically passed and not on merit. In that view of the matter, I am of the opinion that the non-applicants shall be granted protection for 10 days. Accordingly, it is directed that the non-applicants shall not be

arrested for 10 days. It is made clear that on expiry of 10 days the protection would automatically come to an end.

All the Criminal Applications stand **disposed of** accordingly.

(ANIL S. KILOR, J)

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