

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

BAIL APPLICATION NO.427 OF 2023

1. VIJAY BHULLAN GUPTA
2. GOPAL RAMKARAN YADAV @ GOPAL SINGH ..APPLICANTS
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

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Mr. Milan Desai, for the Applicants.
Mr. P. H. Gaikwad, APP for the State.
Mr. Kashinath Chavan-ACP, 'D' North, Kandivali Crime Branch,
Mumbai present.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 13, 2023

P.C. :

- 1.** Heard learned counsel for the applicants and learned APP for the State.
- 2.** The applicants seek their release on bail in Special Case No. 472 of 2020 pending before the Special Designated Court constituted under the Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act', for short), which has charged him for the offences under sections 3(1)(ii), 3(2), 3(4) of the MCOC Act and sections 387, 120(b) read with 34 of the Indian Penal Code.
- 3.** There are in all 3 accused. Accused no.1-Harish Rama Mandavikar is alleged to be the gang-leader. Applicant no. 1-accused

no.3 was running a hotel which was let out to him/leased to him by the informant. There was some dispute between the informant who was the owner of the restaurant situated at Kandivali and the accused no.3. Accused no.3 was not paying the rent neither was he vacating the premises. The informant was insisting that the accused no.3 vacate the premises. Accused no.3 therefore is alleged to have hired the services of the accused no.1 for threatening the informant. It is the accusation that sometime in February 2020, the applicant no. 2- accused no.2 had made a telephone call to the informant threatening him that he should not harass the accused no.3 and further a demand of money of Rs. 10 lakhs was made on behalf of the accused no.1. The informant was warned by the accused no.2 that hereafter there should be no harassment to the accused no.3.

4. The applicant no.1- accused no.3-Vijay Bhullan Gupta was arrested on 13/03/2020. Applicant no.2 – Gopal Ramkaran Yadav was arrested on 08/03/2020. The applicants are in custody for more than three and half years.

5. Learned APP Shri Gaikwad invited my attention to the affidavit-in-reply filed on behalf of the respondent affirmed by Kashinath Ganpat Chavan, Assistant Commissioner of Police, DCB CID, D-North, Kandivali (West), Mumbai. Learned APP invited my

attention to the role attributed to the present applicants which is stated in detail in the affidavit-in-reply. So far as the applicant no.2 is concerned, criminal antecedents reported against the applicant no. 2 are mentioned at page 950 of the paper-book.

6. It is pertinent to note that the gang-leader- accused no.1 – Harish Rama Mandvikar is already enlarged on bail by order dated 13/10/2022 passed by this Court in Bail Application No. 3207 of 2021. Paragraphs 16, 17, 18 19 of the said order read thus

“16] The charging Section which prescribe punishment for the organized crime would be punishable with death or imprisonment for life for the offence as resulted in death of any person and in any other case it is imprisonment for a term which shall not be less than five years, but which may extent to imprisonment for life and sub-section (2) (3) or (4) and (5) of Section 3 highlight different facets of organized crime syndicate, which invite punishment as grave as imprisonment for life The special statute also contain special provisions like Section 18 which make certain confessions made to Police Officer as admissible in evidence as well as protection of witnesses in the form of Section 19 Section 21 of the said enactment prescribe the modified application of certain provisions of Code and creates an embargo on applicability of Section 438 of the Cr.PC to a person accused of having committed offence punishable under the Act

The twin condition contained in Section 21(4) make it imperative to record a satisfaction before releasing the accused of the offence under the Act to be specified 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

17] The Offence under the MCOCA are therefore, not to be lightly viewed, but what is expected on the part of investigating machinery is to invoke the provisions of the

said enactment with higher responsibility and accountability.

In the present case, where the Applicant is attributed role of head of organized crime syndicate. It can be seen that it is merely because many offences are alleged against him in the last decade. But mere registration of offences however serious they may be do not by itself justify invocation of MCOCA, until and unless it is established that as an organized crime syndicate, the accused either individually or singly was a member of such syndicate and indulged in the type of activities which are contemplated under the Act for gaining pecuniary advantage, by following the modes of violence intimidation contemplated under the said Act. It is only when all the parameters are satisfied, it would justify invocation of provisions of MCOCA.

18] In the present case, in CR NO. 60/2020 wherein the provisions of MCOC are invoked, would reveal that the threat was given in the name of the Applicant and attempt was made to extort money. The Applicant's role do not surface directly in the entire investigation, as the phone calls received by the informant are from distinct numbers, where the caller has identified himself as Harish Mandavikar ie the Applicant who demanded the amount.

The material in the charge-sheet do not conclusively establish that the calls are made by the Applicant and from the Affidavit it is apparent that the witnesses have reported about the co-accused No 3 and 2 making the phone calls in the name of the applicant.

19] When earlier CRS on the basis of which provisions of MCOCA are invoked are perused, the accusations are again of similar nature of giving threats in the name of the present Applicant. Admittedly, the nature of accusations normally would not be gone into, when MCOCA is invoked, but this is a fit case where merely on the pretext that serious offence is revealed against the Applicant. it shall not be construed that the court would not lift the veil to find out whether its invocation was justifiable. Therefore, I have gone through the accusations levelled against the Applicant in the CRs on the basis of which prosecution under draconian law like MCOCA has been invoked, as submission of the learned counsel for the Applicant is the vindictive approach with which cases are fastened upon him. Needless to state that Applicant will take consequences of accusations at the time

of trial, but at present, his further incarceration is unnecessary and he deserve his liberty.”

7. So far as the applicant no.1 is concerned, learned counsel for the applicants on the instructions of the son of the applicant no. 1 who is present in Court submits that there are civil disputes pending between the applicant no.1 and the informant as the informant wanted the applicant no. 1 to vacate the restaurant premises which he was occupying. Learned counsel on instructions also submits that the applicant no.1 is no more in possession of the premises. As a matter stands as of today, I am informed that the applicant no.1 is no more in possession and the informant has already entered into some agreement with third person who is inducted in the premises earlier occupied by the applicant no.1. So far as the applicant no.2 is concerned, the role attributed is that he made phone call to the informant threatening him and asking for money in the name of the accused no.1. The applicants are in custody for more than three and half years with no possibility of trial concluding any time soon. In my opinion, the applicants can be enlarged on bail as further custody only will be by way of a pre-trial punishment in the facts and circumstances of the case. The gang leader is enlarged on bail. Though there are criminal antecedents reported against the applicant

no. 2, the same by itself should not be a reason to deny the facility of bail to the applicant no.2 in the present case. The investigation is complete. The charge-sheet has been filed. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant no.1- Vijay Bhullan Gupta and applicant no.2 – Gopal Ramkaran Yadav @ Gopal Singh in connection with Special Case No. 472 of 2020 arising out of C.R. No. 60 of 2020 registered with DCB CID, Unit XI shall be released on bail on their furnishing P.R. Bond of Rs.50,000/- each with one or more local sureties in the like amount.
- (c) The applicants are permitted to furnish cash bail surety in the sum of Rs. 50,000/- each for a period of 6 weeks in lieu of surety.
- (d) The applicants shall report to the DCB CID, Unit XI once in a month on every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (e) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants shall not tamper with evidence.

(f) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) Except for the purpose of reporting to the investigating officer, the applicants shall not enter the jurisdiction of Kandivali police station after being released on bail, till the trial concludes.

(i) The applicants shall regularly attend the trial, on every date, unless exempted. The applicants shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)