

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

CRIMINAL APPLICATION (APPLN) NO.53/2022
State of Maharashtra, through Sub Divisional Police Officer, Sakoli,
Tahsil Sakoli, District Bhandara
..VS..
Shivank @ Shivam Pravinsingh Thakur

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

Court's or Judge's Order

.....
Shri I.J.Damle, Additional Public Prosecutor for the
Applicant/State.
Shri R.R.Vyas, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 05/06/2023
PRONOUNCED ON : 12/06/2023

1. The State has preferred this application under Section 439(2) of the Code of Criminal Procedure seeking cancellation of bail granted to non-applicant/Shivank Thakur.

2. The crime is registered vide No.11/2021 with Tumsar Police Station for offences punishable under Sections 143, 147, 148, 149, and 120B of the Indian Penal Code read with Sections 3 and 25 of the Arms Act against co-accused Dinesh Meshram, Zabbu @ Shubham Devendra Katwar, Bhupendra Gilorkar, Manoj Kanekar, Kalu Mate, Naeem Sheikh, and Gappu @ Mayur Ravikant Sandekar. Upon investigation, investigating officer added offences under Section 3(1)(i), 3(1)(ii), 3(2), and 3(4) of the The Maharashtra Control of Organized Crime Act, 1999 (MCOC Act). During investigation, name of the

non-applicant was revealed and he came to be arrested. The non-applicant, by Criminal Bail Application No.11/2021, moved before learned Special Judge at Bhandara. Learned Special Judge, by passing order on 18.11.2021, allowed the application of the non-applicant and released him on bail.

3. Being aggrieved and dissatisfied with the said order, the present application is filed by the State for cancellation of the bail on the ground that the non-applicant procured fire arm and supplied it to the other accused in order to facilitate the offence. The non-applicant was in contact with other accused persons prior to commission of the offence as well as after commission of the offence. Thus, the non-applicant was part of the criminal conspiracy hatched by the accused persons in order to eliminate Santosh Dahat. The fire arm provided by the non-applicant was used to commit the offence and also the said weapon was recovered. Thus, the investigating agency collected evidence against the non-applicant and rightly arraigned him as an accused.

4. It is further contended that learned trial court, while releasing him on bail, had not considered Section 21(4) of the MCOC Act and erroneously observed that there is no material on record to show that the non-applicant is having criminal

antecedents or is having any crime registered as a member syndicate. Learned trial court further observed that in absence of sanction by the competent authority to book the non-applicant under the provisions of the MCOC Act, the limitation prescribed under sub-section (4) of Section 21 of the MCOC Act is not attracted. It is further submitted that learned trial court failed to consider the criminal antecedents and also formidable evidence collected during the course of investigation and wrongly released the non-applicant on bail.

5. The said application is strongly opposed by the non-applicant on the ground that one of co-accused has preferred Criminal Writ Petition No.349/2021 challenging the proposal seeking approval for revoking the provisions of the MCOC Act and the division bench of this court stayed the effect, operation and implementation of the approval. Other co-accused Bhupendra Gilorkar also challenged the said action by preferring Writ Petition No.332/2021. The division bench of this court stayed the order impugned. As the order of approval is stayed, the further proceeding under the MCOC Act cannot be continued and, therefore, the application is not maintainable. It is further contention of the non-applicant that learned trial court passed a reasoned order by considering material on record and held that the limitation under sub-Section (4) of Section 21 of the MCOC

Act are not attracted. The application is devoid of merits and the same is liable to be rejected.

6. Heard learned Additional Public Prosecutor Shri I.J.Damle for the applicant/State and learned counsel Shri R.R.Vyas for the non-applicant.

7. Learned Additional Public Prosecutor Shri I.J.Damle for the applicant/State reiterated the contentions raised in the application and submitted that in view of sub-section (4) of Section 21 of the MCOC Act, the non-obstante clause is inserted in sub-sections (4) and (6) of Section 21 that there are certain restrictions placed on the power of the court when granting bail to a person accused of having committed an offence under the MCOC Act. Not only the limitations are imposed under Section 439 of the Code of Criminal Procedure to be kept in mind but also the conditions are imposed that the public prosecutor ought to be given an opportunity to oppose the application 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 trial court has not assigned any reasonable grounds on the basis of which it came to conclusion that the accused is not guilty of any offence.

Learned trial court has not considered the restrictions inserted in Section 21 (4) of the MCOC Act and, therefore, the bail granted to the non-applicant deserves to be cancelled.

8. *Per contra*, learned counsel Shri R.R.Vyas for the non-applicant submitted that learned trial court has assigned the reason and observed that the material was forwarded to the competent authority to obtain sanction to add the offence punishable under the provisions of the MCOC Act. The investigating officer did not forward any material against the non-applicant. After registration of the offence, till arrest of the non-applicant, the prosecution nowhere alleged that the non-applicant is a member of the group of Dinesh Meshram even the competent authority did not give permission to add the provisions of the MCOC Act against the non-applicant. Learned trial court further observed that Crime No.498/2019 has been registered at Tumsar Police Station under Sections 302 and 307 read with Sections 149, 201, and 120B of the Indian Penal Code against the non-applicant and the other accused persons. Crime No.248/2018 was also registered at Tumsar Police Station against the non-applicant. *Prima facie*, material collected by the investigating agency nowhere shows that the non-applicant has acquired any movable or immovable property through criminal activities. The investigating officer could not collect any

material to show that the non-applicant has any account to show that he has collected any benefits from the illegal activities. Thus, no material is on record to show that the non-applicant acquired any property by criminal activities. Thus, there is no material to show that he was member syndicate of the other co-accused and released him on bail.

9. The only contention raised by learned Additional Public Prosecutor Shri I.J.Damle for the applicant/State is that learned Special Judge has not considered the limitation inserted in sub-section (4) of Section 21 of the MCOC Act. He further fairly submitted that now all other accused persons are already released on bail.

10. Perusal of the order passed by learned trial court shows that learned trial court has considered the entire material before it and came to the conclusion that in absence of any material evidence, the non-applicant cannot be said to be the member syndicate of the gang of the co-accused persons. The present application is filed for cancellation of the bail.

11. It is settled law that bail cannot be cancelled in a casual manner overwhelming circumstances are required for cancellation of bail. The Honourable Apex Court in the case of **Deepak Yadav vs. State of U.P.**, reported in 2022 LiveLaw (SC)

562 observed that cancellation of bail cannot be limited to the occurrence of supervening circumstances. The illustrative circumstances where the bail can be cancelled are (1) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record; (2) where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim; (3) where the past criminal record and conduct of the accused is completely ignored while granting bail; (4) where bail has been granted on untenable grounds; (5) where serious discrepancies are found in the order granting bail thereby causing prejudice to justice; (6) where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which dis-entitles him for bail and thus cannot be justified, and (7) when the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

12. The learned Additional Public Prosecutor Shri I.J.Damle for the applicant/State vehemently submitted that learned trial court ignored the limitations. It is evident from a plain reading of non-obstante clause inserted in sub section (4)

of Section 21 of the MCOC Act and the conditions imposed in clause (a) that the public prosecutor has been given an opportunity to oppose the application of such release and in clause (b) 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. The expression reasonable grounds means something more than *prima facie* grounds. It contemplates substantial probable clauses for believing that the accused is not guilty of the alleged offence. The reasonable belief requires existence of such facts and circumstances as the same is sufficient to justify satisfaction.

13. Perusal of the order of learned trial court shows learned Special Judge has recorded the reasons behind his satisfaction. Learned Special Judge has also taken into consideration the restrictions inserted in sub-section (4) of Section 21 of the MCOC Act and by observing that there is no material to substantiate that the non-applicant has collected or acquired any property or any monetary benefits from the criminal activities. Learned Special Judge has observed that the material collected by the investigating agency and in absence of sanction of the competent authority, the limitation under sub-section (4) of Section 21 of the MCOC Act is not attracted.

14. Thus, learned trial court has considered the material before it and passed the order. The prosecution failed to address any perversity in the order passed by learned trial court. No circumstance is brought on record to interfere with the said order.

15. In view of the reasons recorded above, the application deserves to be rejected and the same is rejected.

The criminal application stands disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!