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

CRIMINAL APPLICATION (BA) NO.1454/2022
Ravi @ Chotu s/o Tikaram Bagde
..vs..
State of Mah., thr.PSO Pachpaoli Police Station, Nagpur,
District Nagpur 440 001

WITH
CRIMINAL APPLICATION (BA) NO.1489/2022
Sheikh Mohtasim s/o Sheikh Sardar
..vs..
State of Mah., thr.PSO PS Pachpaoli, Nagpur, District Nagpur

WITH
CRIMINAL APPLICATION (BA) NO.317/2023
Vinaykumar @ Golu Dwarkaprasad Bathao
..vs..
State of Mah., (thr.its Police Inspector) Pachpaoli Police Station, Nagpur

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

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BA No.1454/2022
Shri S.P.Bhandarkar, Counsel with Shri Ganesh Mate, Adv. for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

BA No.1489/2022
Shri U.P.Dable, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

BA No.317/2023
Shri S.W.Sambre, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 18/07/2023
PRONOUNCED ON : 07/09/2023

1. These three applications under Section 439 of the Code of Criminal Procedure for grant of regular bail are heard

together and are disposed of by this common order since these applications arise out of same crime vide No.255/2016 registered with Pachpaoli Police Station, Nagpur for offences punishable under Sections 120-B; 121; 143; 144; 147; 148; 149; 201; 302; 364 and 365 of the Indian Penal Code and under Section 3(1)(i)(ii); 3(2); 3(3); 3(4); 3(5) and 4 of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act) along with Sections 3/25 and 4/25 of the Indian Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951.

2. Smt.Savitri Manish Shriwas, is complainant, who is wife of deceased Manish. She lodged a report with Pachpaoli Police Station, Nagpur on the basis of which Crime No.255/2016 is registered. The report was lodged for substantive offence of kidnapping and murder.

As per her report, the deceased was implicated in one murder case of Abid, which was committed in October 2011 and, therefore, he used to live out of house as he was absconding. He used to visit her and other family members secretly. On 25.2.2012, when he was at home, he received a phone call of Chotu Bagde (applicant in Criminal Application

No.1454/2022) and left the house to meet him. Thereafter, he did not turn up. She along with her entire family was under a belief that the deceased was involved in murder case and, therefore, he is hiding himself to avoid his arrest. Subsequently, she came to know that the deceased was kidnapped by Isak Maske, applicant Chotu Bagde, and others and they had done some act with him and committed his murder. Therefore, she lodged the report against him and other co-accused on the basis of which the offence came to be registered.

3. During investigation, some unknown persons informed the investigating agency that co-accused Ranjit Saphelkar, Kalu Hate, Bharat Hate, Chotu Bagde (one of applicants), and other accused committed murder of the deceased. The statements of secret witnesses were recorded and it revealed that Sharad Hate, who is gang leader, and applicants along with co-accused, were members of organized crime syndicate and were involved in continuous unlawful activities. Gang leader Sharad Hate apprehended that the deceased would commit his murder and, therefore, with the help of Chotu Bagde, (one of applicants), with whom the deceased was having friendship, abducted him and committed

his murder with the help of other co-accused. At the relevant time, secret witness No.1 was also in car who had witnessed the said incident. The statement of another secret witness was also recorded. During the investigation, confessional statements of the co-accused were recorded and after completion of investigation, chargesheet was submitted against the applicants.

4. As per contentions of applicants, the entire allegations assaulting and killing the deceased are false and fabricated. In fact, the deceased was involved in one Monti murder case, in respect of which Crime No.34/2012 was registered. After investigation, chargesheet was filed and the deceased was shown as absconding. Dead body of the deceased was not found. Thus, there is no material to show that murder of deceased Manish was committed. It is further contentions of the applicants that even if the case of the prosecution is accepted as it is, entire allegations of assaulting and causing death of the deceased are attributed to all other accused persons. What is alleged against them is, that they are conspirators in the commission of the present crime. During course of investigation, the investigating authority came up with a case that the applicants are members of

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organized crime syndicate and obtained sanction under Section 23(2) of the MCOC Act. Perusal of the sanction order shows there is no record to show that the applicants are chargesheeted jointly with the other members of the organized crime syndicate. As far as allegations of kidnapping and murdering are concerned, the dead body of the deceased is not recovered and, therefore, nothing is on record to show that the death of the deceased is caused. One of co-accused namely Shrinivas @ Sinnu Anna Vinaywar is released on bail. The similar allegations are against the applicants. As such, the applicants be released on bail.

5. The applications are strongly opposed by the State on the ground that during investigation it revealed that co-accused Sharad Hate is gang leader and applicants and the other co-accused were the members of the organized crime syndicate. During the investigation, the investigation officer recorded statements of secret witnesses and also recorded confessional statements of the co-accused which show that applicant Chotu Bagde was involved in abducting the co-accused as well as in commission of the murder of the deceased. The other applicants along with co-accused were members of the organized crime syndicate. They were

continuously involved in unlawful activities and, therefore, the sanction was obtained to initiate prosecution against them under the provisions of the MCOC Act. In view of Section 21(4) of the MCOC Act, the court has to come to conclusion that the accused are not guilty of offences. Thus, there are limitations on the court while granting bail to the accused. The material collected during the investigation shows involvement of the applicants. Hence, applications deserve to be rejected.

6. Heard learned counsel Shri S.P.Bhandarkar for the applicant in Criminal Application No.1454/2022; learned counsel Shri U.P.Dable for the applicant in Criminal Application No.1489/2022; learned counsel Shri S.W.Sambre for the applicant in Criminal Application No.317/2023, and learned Additional Public Prosecutor Shri M.J.Khan for the State. They made following submissions :

(i) material on record does not attribute role to the applicants in relation to the kidnapping and murdering the deceased;

(ii) the applicants have been prosecuted for being members of organized crime syndicate allegedly run by co-accused Sharad. However, no specific act has been attributed to the applicants except the allegation that they were members of organized crime syndicate and involved in continuous unlawful activities;

(iii) reliance of the prosecution on confessional statements of the co-accused relates to applicant Chotu Bagde in relation to kidnapping. However, it is not sufficient to connect them in the alleged offence;

(iv) statements of independent witnesses nowhere connect the applicants with the organized crime. Such statements are based on untrue events and thus, the material against the applicants is insufficient to show that no overt act is attributed to the applicants in the continuing unlawful activities in the gang of co-accused Sharad Hate so as to prove their live link with the same;

(v) material on record falls short of proving the guilt of the applicants as there is absolutely no nexus or live link between the organized crime of the co-accused and the allegations made against the applicants;

(vi) confessional statements without independent corroboration could not lead to any consequent guilty and, therefore, requirement of Section 21(4) of the MCOC Act to grant bail is fully satisfied;

(vii) the deceased was allegedly involved in Crime No.34/2012 and shown as absconding. Learned Sessions Judge recently decided the said trial and acquitted accused persons and directed investigating agency to file a separate chargesheet against absconding accused Manish, the deceased in the present case. The dead body of the deceased is not found. Thus, there is no material to show that the death of the deceased has occurred as per the allegations of the prosecution;

(viii) even if allegations levelled are assumed as it is, there is no material to show that the applicants are members of organized crime syndicate and, therefore, the provisions of the MCOC Act are not applicable against the applicants;

In support of the contentions, learned counsel for respective applicants placed reliance on following decisions:

(i) **LIC of India vs. Anuradha, reported in (2004)10 SCC 131** wherein it is held by the Honourable Apex Court by referring provisions of Sections 107 and 108 of the Indian Evidence Act that Section 108 is an exception to rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. It is held that presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who's life or death is in issue.

(ii) **Bhikubhai Dayaram Thanki vs. State of Maharashtra, reported in 2018 SCC OnLine Bom 2636** wherein it is held that the confession of PW1 recorded during investigation cannot be taken as a substantive piece of evidence because provision of sub section (1) of Section 18 of the MCOC Act provides that such confession shall be admissible provided that the co-accused abattor or conspirator is charged and tried in the same case together with the accused.

(iii) **Zakir Abdul Mirajkar vs. State of Maharashtra, reported in 2022 SCC OnLine SC 1092**.

(iv) **Mohd.Farooq Abdul Gafur and anr vs. State of Maharashtra, reported in (2010)14 SCC 641** wherein it is held that the dead body has not been recovered. Only a limb was recovered but no DNA testing was carried out to establish that the limb was that of deceased Kaushik Sarkar. The principle of *corpus delicti* has judgments on both sides stating that conviction can be recorded in the absence of recovery of the corpus and the other view that no conviction could be recorded in the absence of recovery of corpus. The later view is for the reason that if subsequently the corpus appears as alive, someone may have been convicted and sentenced and suffered incarceration for no crime committed by him.

7. *Per contra*, learned Additional Public Prosecutor for the State vehemently submitted that during investigation, it revealed that gang leader Shard Hate had apprehension that the deceased would commit his murder and, therefore, he

with the help of applicant Chotu Bagde, who was friend of the deceased, kidnapped the deceased and committed his murder. During investigation, the Investigating Officer recorded statement of secret witness No.1, who was present in the same car in which the deceased was taken. She has witnessed the incident showing the involvement of the applicants in causing the death of the deceased. She had also sustained the injuries at the relevant time. During investigation, confessional statements of the co-accused were also recorded which show involvement of the applicants in the alleged offences. Merely because the dead body of the deceased was not found, the same is not sufficient to infer that the deceased is alive at this stage. At this stage, statements of eyewitnesses, confessional statements of co-accused, audio recording, and panchanamas of the communication between co-accused Sharad Hate and other accused sufficiently show involvement of the applicants in the crime.

He further submitted that in view of Section 21(4) of the MCOC, the limitations are imposed on the court while considering the bail applications. For releasing applicant on bail, this court has to come to positive conclusion that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

He submitted that at this stage, considering the material on record, there are sufficient grounds to show that the applicants are involved in the commission of the alleged crime.

8. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

(i) **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131;**

(ii) **Ram Gulam Chaudhary and others vs. State of Bihar, reported in (2001)8 SCC 311**;

(iii) **The State of Maharashtra vs. Vishwanath Maranna Shetty (Cr.Appeal No.1689/2012 decided by the Honourable Apex Court on 19.10.2012**;

(iv) **Zakir Abdul Mirajkar vs. State of Maharashtra, reported in AIR OnLine 2022 SC 1325**;

(v) **Ram Swaroop and others vs. State of Rajasthan, reported in (2004)13 SCC 134**;

(vi) **Bhikubhai Dayaram Thanki and anr vs. The State of Maharashtra, reported in 2019 ALL MR (Cri) 3018;**

(vii) **Mohd.Farooq Abdul Gafur and another vs. State of Maharashtra, reported in (2010)14 SCC 641**;

(viii) **Kavitha Lankesh vs. State of Karnataka, reported in AIR 2021 SC 5113;**

(ix) **Bail Application No.1158/2021 decided on 11.8.2022**;

(x) **Anil Murlidhar Deshmukh vs. State of Maharashtra, reported in 2006 LawSuit (Bom) 1822**;

(xi) **San Murlidhar Taralkar vs. State of Maharashtra, reported in 2008 LawSuit (Bom) 3854**, and

(xii) **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538**.

9. Before going into the controversy involved in the present applications, it is necessary to see certain provisions of the MCOC Act and its preamble. The preamble states that it is an Act to make special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, and for matters connected therewith and incidental thereto. The MCOC Act, states the preamble, makes special provisions for prevention and control of, for coping with, criminal activity by organized crime syndicate or gang. Essentially, therefore, the MCOC Act targets the unlawful activities of the organized crime

syndicate. The objects and statements of the MCOC Act show that organized crime has for quite some years come up as a very serious threat to the society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

10. The legislatures felt that The existing legal framework i. e. the penal and procedural laws and the adjudicatory system was found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control

the menace of the organised crime. It is the purpose of this Act to achieve there objects.

11. Section 2(1)(f) of the MCOC Act defines "organized crime syndicate' to mean a group of two or more persons who, acting singly or collectively, as a syndicate or gang indulged in activities of organized crime.

12. Section 2(1)(e) of the MCOC Act defines "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

13. The definition of continuing unlawful activity within meaning of Section 2(1)(d) states an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which

more than one chargesheets have been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

14. Thus, for an activity to be a `continuing unlawful activity', a) the activity must be prohibited by law; b) it must be a cognizable offence punishable with imprisonment of three years or more; c) it must be undertaken singly or jointly; d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate, and e) in respect of which more than one charge- sheet have been filed before a competent court. Therefore, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.

15. This Court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra** cited supra in paragraph No.37 defines "continuing unlawful activity". This court observed

that The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOC Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOC Act. This is evident from section 3(4) of the MCOC Act which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lacks. It is further held that what is important is the nexus or the link of the person with organized crime syndicate. The link with the 'organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.

16. By giving hypothetical examples, it is held that what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force

which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one charge-sheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

17. This court, further in case of **Gulab Jethanand Khemnani vs. State of Maharashtra** cited *supra,* held that a person need not necessarily be a member of the organised crime syndicate/gang; and yet be liable to be proceeded for offence of being party to a conspiracy by virtue of section 120-B of Indian Penal Code read with section 3(2) read with section 2(1)(a) of the MCOC Act. It is held that it is well established that there can be no direct evidence of conspiracy. Ordinarily, conspiracy is to be inferred from different set of established circumstances. The fact that at the relevant time, there was no other criminal case or trial pending against him in respect of a specified cognizable offence and Court not having taken cognizance thereof, will not absolve such person from the alleged offence of MCOC Act by virtue of section

120-B of Indian Penal Code read with section 3(2) and section 2(1) (a) of MCOC Act.

18. In the light of the above well settled legal position and provisions enumerated therein, if the facts of the present case and the material collected during the investigation are considered, it reveals that the entire incident came into light as the Commissioner of Police received an anonymous application stating in it circumstances in which the alleged incident has taken place. The said application is dated 25.2.2021 and received in the Commissioner's office on 2.3.2021. By taking cognizance of the said application, statement of the complainant was recorded and it revealed that on 25.2.2012, the deceased received a phone call from applicant Chotu Bagde and left the house and did not return back. On the basis of the report lodged by the complainant, the crime was registered. During the investigation, the Investigating Officer recorded various statements and it revealed that the applicants were asked by co-accused to call the deceased as one of applicants namely Chotu Bagde was having friendly relation with the deceased. Thereafter, the deceased was kept in one house. Prior to that, there was a meeting held at the house of Ranjit Saphelkar whereat Ranjit

Saphelkar, Bharat Hate, Kalu Hate, applicant Chotu Bagde, Sinnu Anna Vinaywar, and Hemant Gorkha were present. They hatched a conspiracy. As per the plan, applicant Chotu Bagde was asked to call the deceased and bring him at Khaparkheda. However, the said plan could not be worked out. Again, they held a meeting and it was decided that the deceased is to be called on account of meeting one girl as the deceased in habit of roaming with various girls. Co-accused Rajit Saphelkar and Kalu Hate arranged a place in agricultural field of one Harichand Dhawde at Pawangaon Road, Dhargaon, Kamptee. It further revealed that in March 2011, in the first week, they have decided to kill the deceased. Applicant Chotu Bagde, informed the deceased that he has arranged a girl for him and they will proceed at a place with the said girl. The deceased shown his readiness for the same. Accordingly, applicant Chotu Bagde reached at the house of Ranjit Saphelkar at about 6:00 pm wherein all the other co-accused persons were present. Co-accused Ranjit Saphelkar provided them a Santro Car. Applicant Chotu Bagde brought a girl in the said car and took the deceased in the said car. The deceased, applicant Chotu Bagde, and a girl went to Pawangaon Road in agricultural field of Harichand Dhawde. At the said place, all other co-accused persons were already present there along with weapons. They attacked on the deceased and killed the deceased. The dead body of the deceased was cut into pieces and thrown in Kurai Ghat in Madhya Pradesh.

19. During investigation, names of the applicants were revealed from statements of secret witnesses and confessional statements of the co-accused persons. The confessional statements of co-accused Hemant Gorkha and applicant Vinaykumar @ Golu Dwarkaprasad Bathao (applicant in Criminal Applicant No.317/2023) were recorded. The confessional statements of co-accused Sharad Hate, Diwakar Kottulwar were also recorded, who disclosed the applicants' complicity in the organized crime and nexus with an accused who is member of organized crime syndicate. Thus, the prosecution relied on confessional statements under Section 18 of the MCOC Act of the co-accused as above named as well as the secret witnesses. One of secret witnesses is eyewitness of the said incident.

20. Perusal of the investigation papers shows that against applicant Chotu Bagde, Crime No.394/2008 is

registered along with accused No.4 Ranjit Saphelkar and accused No.3 Hemlal @ Hemant Lalbahadur Gorkha and Crime No.116/2009 is registered with accused No.10 Shailesh @ Kalya Tilakchand Meshram, accused No.11 Abdul Taj Abdul Azeez, and accused No.12 Shaikh Mohtasingh Shaikh Sardar (applicant in Criminal Application No.1489/2022).

As far as applicant Shaikh Mohtasingh Shaikh Sardar is concerned, 16 offences are registered against him. He appears to be involved in 12 offences along with the gang leader. Crime No.203/2002 was registered against him with gang leader and the other co-accused. Crime Nos.113 and 116/2009 are also registered against him along with the other co-accused.

As far as applicant Vinaykumar @ Golu Dwarkaprasad Bathao (in Criminal Application No.317/2023) is concerned, his own confessional statement shows his involvement in the alleged crime.

21. Learned counsel Shri S.P.Bhandarkar, submitted that there is no evidence on record to show that applicant Chotu Bagde is member of the organized crime syndicate.

22. Considering the material on record, which shows association of applicant Chotu Bagde along with co-accused, this court in the **Gulab Jethanand Khemnani vs. State of Maharashtra** cited *supra* observed that there was no other criminal case or trial pending against him in respect of a specified cognizable offence and Court not having taken cognizance thereof, will not absolve such person from the alleged offence of MCOC Act by virtue of section 120-B of Indian Penal Code read with section 3(2) and section 2(1)(a) of MCOC Act. It is further held by this court that it is well established position that a person need not necessarily be a member of the organised crime syndicate/gang; and yet be liable to be proceeded for offence of being party to a conspiracy by virtue of section 120-B of Indian Penal Code read with section 3(2) read with section 2(1)(a) of the MCOC Act.

23. While granting sanction under the provisions of MCOC Act, competent authority had considered various crime details registered against the gang leader and other members of the organized crime syndicate since years 2007 to 2021 and observed that the gang leader and the co-accused have

committed offences and total 78 offences are registered against the gang leaders and other members of the gang.

As far as applicant Chotu Bagde is concerned, the offences are registered against him including the offences under the Arms Act. The role of said Chotu Bagde revealed is that he was involved in criminal conspiracy and as per predetermined plan, he taken the deceased and a girl to the spot selected by co-accused Ranjit Saphelkar and was actively involved in committing the murder of the deceased.

As far as applicant Sheikh Mohtasim s/o Sheikh Sardar is concerned, total 17 offences are registered against him including the offences with the members of the organized crime syndicate.

As far as applicant Vinaykumar @ Golu Dwarkaprasad Bathao, he is also involved in the conspiracy as well as actual assault and various offences are registered against him with the members of the organized crime syndicate.

24. After adverting to arguments, it may state what the Honourable Apex Court observed in the decision in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of**

Maharashtra and anr, reported in (2005)5 SCC 294 that in order to invoke MCOC Act even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOC Act . Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOC Act.

25. A bare perusal of the confessional statements of the co-accused discloses that all the applicants were present when the conspiracy as to the causing of the death of the deceased was hatched. The applicants not only involved in hatching the conspiracy but also they were involved in actual commission of the offence i.e. causing the death of the deceased. During the investigation, the Investigating Officer

recorded audio recording seizure panchanama from which discussion between co-accused Ranjit Ranjit and Dinesh Milmile shows their involvement in the crime. In another audio recording panchanama, communication between co-accused Vishal and Ranjit Saphelkar, from which also their involvement along with the applicants is revealed.

26. Thus, besides the statements of the secret witnesses, confessional statements of the co-accused reveal involvement of the applicants.

27. As observed by this court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra** cited *supra*, having hypothetical examples, what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one chargesheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

28. Thus, the material on record, as discussed above, especially the confessional statements of the co-accused, discloses involvement of the applicants in the alleged offence.

29. The Honourable Apex Court in the case of **Zakir Abdul Mirajkar vs. State of Maharashtra** cited *supra* interpreted The reason why Section 18(1) contains a non obstante provision overriding the Evidence Act is because Section 25 of the Evidence Act stipulates that no confession made to a police officer shall be proved as against a person accused of an offence. The bar contained in Section 25 is limited by Sub Section (1) of Section 18 of the MCOC Act. Evidently, the Legislature while lifting the bar was conscious of the underlying rationale for Section 25 of the Evidence Act. It s further held by the Honourable Apex Court that sub section (1) of Section 18 contains two safeguards, the first being with reference to the person who records the confession and the second in terms of the modalities for recording the confession.

30. This court also in the case of **Bhikubhai Dayaram Thanki vs. State of Maharashtra** cited *supra* considered the aspect of confession under Section 18 and held that confession under Section 18 is admissible against co-accused

as a substantive evidence. The substantive evidence would not mean that it should be treated automatically as substantive evidence. The quality of the evidence is important.

31. The Honourable Apex Court further considered confessional statement in case of **Mohd.Farooq Abdul Gafur and anr vs. State of Maharashtra** cited *supra* and held that on perusing confessional statement, it is found that it substantially complies with requirement of Section 18 read with Rule 3(6). The said confessional statement was made voluntarily and while recording the same, post confessional formalities were framed. It is further held that so far as conviction under MCOC Act is concerned, it is quite clear that conviction could be based solely on the basis of the confessional statement itself and such conviction is also permissible on the basis of the confessional statement of the co- accused which could be used and relied upon for the purpose of conviction.

32. Thus, the material on record, as discussed herein above, prima shows that the applicants were in association with the co-accused involved in the organized crime. The

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confessional statement of the co-accused and the statements of the secret witnesses, who are eyewitnesses of the incident, also show involvement of the applicants in the alleged offence.

33. As held in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr** cited *surpa*, the communication or the association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the offence under Section 3(2) of MCOC Act must have a direct nexus with the offence committed by an organised crime syndicate.

In the present case, the said requirement at this stage is established by the prosecution.

34. As observed earlier, that the provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the

grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail because in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

35. Considering the material, particularly in the light of the bar under Section 21(4) of the MCOC Act, *prima facie,* case is made out against the applicants.

36. As observed by the Honourable Apex Court in the case of **The State of Maharashtra vs. Vishwanath Maranna Shetty** cited *supra,* while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a

finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. It is further observed by the the Honourable Apex Court that while dealing with application for grant of bail, in addition to broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

37. Thus, satisfaction contemplated in clauses (a) and (b) of sub Section (4) of Section 21 of the MCOC Act, regarding accused being not guilty, has to be based on reasonable grounds. Though expression reasonable grounds has not been defined, it requires something more than a *prima facie* ground.

38. Learned counsel appearing for respective applicants placed much stress on the fact that the dead body of the deceased was not found and the district court in the trial against the deceased directed the police to file chargesheet as the deceased was shown absconding.

39. Thus, the prosecution has not established the death of the deceased.

40. At this stage, the statements of the secret witnesses and the confessional statements of the co-accused carry much weight.

41. It is also well settled that merely because *corpus delicti* not found the accused cannot be set scott free. On the contrary, the decision in the case of **Ram Gulam Chaudhary and others vs. State of Bihar**, cited *supra,* by learned Additional Public Prosecutor for the State, shows that even so the accused can be convicted, if there is a direct or circumstantial evidence, the victim had died and the accused had committed the murder.

42. Considering the entire material on record, there is a *prima facie* material to show that the applicants were

connected with the organized crime syndicate and were involved in the conspiracy as well as the actual incident.

43. To grant bail to accused, the court has to come to conclusion that accused is not guilty of offence on the basis of reasonable grounds.

44. As observed, the expression "reasonable ground" has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that accused is not guilty of offence he is charged with. The reasonable belief on the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged crime. Thus, recording of satisfaction on these aspects is *sine qua non* for grant of bail.

45. In the light of the above well settled legal position, at this stage, there is sufficient material on record to hold that the applicants are guilty of the offences. It is difficult to come to conclusion that they are not guilty of the offences and, therefore, I am not inclined to grant the bail to the applicants.

46. The evidence available on record *prima facie* discloses complicity of the applicants in assisting the members of the crime syndicate to commit the organized crime.

Accordingly, the bail applications deserve to be rejected and the same are rejected.

The criminal applications stand **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!