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

CRIMINAL APPLICATION (BA) NO.381/2023
Amjad Khan s/o Aziz Khan
..vs..
State of Mah., thr.Sakkardara PS, District Nagpur

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

Shri D.N.Mehta, Counsel for the Applicant.
Shri M.J.Khan, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 19/08/2023
PRONOUNCED ON : 15/09/2023

1. The present application is under Section 439 of the Code of Criminal Procedure read with Section 21(4) of The Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act) for grant of regular bail in connection with Crime No.327/2022 registered with the non-applicant/police station for offences punishable under Sections 120-B, 384, 386, 420, 447, 467, 468, 471, 504, and 506 of the Indian Penal Code and under Sections 3(1)(ii), 3(2), 3(4), and 4 of the said Act.

2. One Shri Amjad Hussain @ Gulam Hussain, lodged report on 31.8.2021 against the applicant and other co-accused on an allegation that he is a resident of Tajbagh, Nagpur and having his house admeasuring 8000 square feet opposite to office of Tajbagh Old Trust. At the relevant time, Baba Tajuddin

Auliya came there and after his death, the Dargah in his name was established. His father and grandfather were working there as khadims and subsequently he was also working in the same Dargah. Adjacent to his house, there were six shops which were given on rent. In the year 1991, his father constructed cement concrete house behind their house. Out of six shops, the complainant was running PCO and STD Booth in one shop. His father was working as peon in the Dargah. The applicant and his brothers were indulged in illegal possession of property, collecting money (hufta) from shopkeepers and restaurant owners of the area. By creating a terror in the locality, they used to extort money by threatening people who were raising voice against them. Nine trustees were looking after affairs of the trust. However, co-accused Shahjad Khan and the applicant, who was member of organized crime syndicate, used to pressurize trustees due to which six trustees tendered their resignations. Subsequently, the applicant and his brothers started threatening shop owners from whom the complainant was getting rents. They also pressurized the complainant to sell his house, they were abused in a filthy language. Six shops were forcibly taken into possession by the applicant and his brother namely Shahjad. In the year 2010, co-accused Shahjad along with his brothers by using JCB Machine demolished the house of the complainant and took the household articles without permission of the complainant. The reason to demolish the house was beautification of Tajbagh Area. As the house of the complainant was demolished, he started residing in a rented house. It is further alleged that the trust had declared that the shops will be allotted to the persons who were having their shops in Tajbagh area. However, no shop was allotted and, therefore, shopkeepers approached the Collector and, thereafter, shopping complex was constructed by the Nagpur Improvement Trust and the process of allotment of shops began. From the collector office, the complainant was entitled for 5 shops. However, co-accused Shahjad, Firoz changed the record of the trust and only registered three shops in the name of the complainant and illegally recorded their names in their remaining shops. Co-accused Shahjad also informed the people that they would get 1000 square feet plot from the trust in 'Mela Ground', Kabrasthan Road, Tajbagh at Nagpur and collected Rs.1.00 lac from them and grabbed the said amount. Thus, as per the allegation, the applicant and the other co-accused were involved in illegal activities and several offences are registered against them and requested for taking action. On the basis of the said report, initially the police registered crime against the applicant and the other co-accused under the provisions of the Indian Penal Code.

3. During the course of investigation, it revealed to investigation officer that the applicant and the other co-accused are members of organized crime syndicate and the gang leader is Firoz Khan who is resident of Tajbagh, Sakkardara at Nagpur. He had created terror in the minds of local residents by using weapons and various crimes like gambling, under the provisions of NDPC, and smuggling were registered against them. Against the gang leader, in all 39 offences have been registered. Against the applicant, total 8 offences are registered. Considering the activities, in which the applicant is involved, the investigating agency has taken decision to invoke the provisions of the MCOC Act and proposal was forwarded to competent authority. The competent authority approved the said proposal and granted sanction to prosecute the applicant and the other co-accused under the provisions of the MCOC Act on 24.1.2020. In view of the order passed by the competent authority, the provisions of the MCOC Act are applied against the applicant and the other co-accused. The applicant is arrested on 16.3.2022. After completion of the investigation, chargesheet is submitted on 7.7.2022.

4. Heard learned counsel Shri D.N.Mehta for the

applicant and learned Additional Public Prosecutor Shri M.J.Khan for the State.

5. Learned counsel for the applicant submitted that the name of the applicant is figured in the First Information Report, however, there is no material against him to connect him with the alleged offences. The allegations are general in nature. A body of trustees in the said trust was established in July 2021 who had their personal grievances against the family of the applicant and, therefore, the false report is lodged. In fact, Secretary of the Trust had grabbed land of the trust and the applicant is targeted by frivolous complaint against him. A civil dispute is sought to be made in criminal matters by the recent appointed trustees. In fact, the provisions of the MCOC Act are not attracted. Now, the investigation is completed and chargesheet is filed as also some of the co-accused are already released on bail. The applicant is also entitled to be released on bail on the ground of parity.

6. Learned counsel for the applicant made following submissions:

A. material on record does not attribute any role to the applicant showing his involvement as member of organized crime syndicate;

B. the applicant has been prosecuted being organized crime syndicate allegedly run by co-accused Firoz Khan. However, no specific role is attributed to the applicant except the allegation;

C. reliance of the prosecution on confessional statement of the accused relating involvement of the applicant, however it is not sufficient to connect him in the alleged offence;

D. statements of independent witnesses nowhere connect the applicant with the organized crime syndicate. Such statements are based on untrue events and thus material against the applicant is insufficient to show that he was involved in continuous unlawful activities;

E. the provisions of the MCOC Act are not applicable because as per the requirements, there should be one or more chargesheet against the applicant on the day of registration of the present First Information Report;

F. the Investigating Officer placed reliance on 3 offences vide Crime No.61/2012 registered under

Sections 323, 385, 294, 506 read with Section 34 of the Indian Penal Code wherein chargesheet was filed on 16.10.2012; Crime No.428/2021 registered under Sections 386, 294, and 506(2) read with 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act wherein chargesheet was filed on 30.8.2021, and in Crime No.430/2021 registered under Sections 386, 294, 506-B, and 109 read with 34 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act wherein also chargesheet was filed on 27.10.2021.

G. Thus, on 31.8.2021 there were no two chargesheets against the applicant and, therefore, requirement to attract the provisions of the MCOC Act is not fulfilled. As such, the bar under Section 21(4) of the MCOC Act is not attracted.

Learned counsel for the applicant further submitted that civil dispute was turned into a criminal offence by the complainant by joining hands with the new trustees and the police officers. Even, if allegations levelled are assumed as it is, there is no material to show that the applicant is member of organized crime syndicate.

7. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Rajiv Thapar and others vs. Madan Lal Kapoor, reported in (2013)3 SCC 330;

2. Akshay Atmaram Rathod vs. State of Maharashtra, through Sub Divisional Police Officer and anr, reported in 2023 SCC OnLine Bom 418;

3. Bail Application (Vinayak s/o Gopalsa Satpute vs. The State of Mah., thr.Basmati City Police Station, District Hingoli) decided by this court at Aurangabad Bench on 11.10.2021;

4. Bhupendra @ Golu s/o Suryakant Borkar vs. State of Mah., reported in 2017 ALL MR (Cri) 1561;

5. Dinesh Bhondulal Baisware vs. The State of Mah., reported in 2016 ALL MR (Cri) 3517;

6. Criminal Application No.488/2020 and other connected matters (Hemant Dhirajlal Bankar vs. State of Mah. and anr) decided on 22.6.2023;

7. Criminal Appeal No.297/2017Madhukar s/o Babu Shinde vs. The State of Maharashtra) decided on 31.7.2018;

8. Mahipal Singh vs. Central Bureau of Investigating and anr, reported in (2014)11 SCC 282;

9. Criminal Application (BA) No.948/2020 (Laxminarayan @ Krishna Naynuram Bharti vs. State of Mah., thr.PSO PS Kamptee, district Nagpur decided by this court on 25.10.2021, and

10. Criminal Application (BA) No.946/2022 (Mukesh s/o Wasudeo Dekate vs. State of Mah., thr.PSO Dhantoli, district Nagpur) decided by this court on 3.10.2022.

8. *Per contra*, learned Additional Public Prosecutor for

the State strongly opposed the application on the ground that during the investigation it revealed that the applicant is member of organized crime syndicate and since the year 1995 he and his other brothers are involved in illegal activities. During investigation, several persons came forward complaining against the applicant and the other co-accused alleging that the applicant extorted amount by threatening them. The applicant accumulated huge movable and immovable properties by indulging themselves in continuous unlawful activities being a member of organized crime syndicate. There are various criminal antecedents against the applicant and total 11 offences are registered against him under various provisions of the Act. Four offences are already registered against the applicant under Sections 385, 384, and 386 of the Indian Penal Code. Considering the nature of crime registered against the applicant, investigation was carried out and co-accused Abdul Jabbar gave his confessional statement which shows involvement of the applicant in the alleged offence. During the investigation, statements of witnesses are recorded which disclose that the applicant and his brothers have created terror in the vicinity and involved in the crime like extortion and on reluctance by any of persons threatened to face dire consequences. At this stage, statements of witnesses, confessional statement of the co-accused, statements of the police officers, who initially investigated the crime registered against the applicant, shows involvement of the applicant in the crime. He further submitted that in view of Section 21(4) of the MCOC Act, limitations are imposed on the courts while considering bail applications. For releasing the applicant on bail, this court has to come to conclusion positively 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. At this stage, considering the material on record, confessional statement of the co-accused is the sufficient material to show involvement of the applicant and therefore, the application deserves to be rejected.

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

> **1. Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri) 131;**
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> **2. Bail Application No.1158/2021 (Yuvraj Ramchandra Jadhav vs. The State of Maharashtra) decided on by this court at Principal Seat on 11.8.2022;**
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> **3. Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and anr, reported in (2021)6 SCC 230;**

4. Anil Madhukar Deshmukh vs. State of Maharashtra, reported in 2006 ALL MR (Cri) 531;

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

6. Mohd.Farooq Abdul Gafur and anr vs. State of Mah., reported in (2010)14 SCC 641;

7. State of Orissa vs. Devendra Nath Padhi, reported in AIR 2005 SC 359;

8. Dinesh Mahadev Bhondve vs. State of Mah. reported in 2007(2) Mh.L.J. 718;

9. Gulab Jethanand Khemnani vs. State of Mah., reported in 2007(2) Mh.L.J. (Cri) 538, and

10. Kavitha Lankesh vs. State of Karnataka, reported in AIR 2021 SC 5113.

10. Before going into the controversy involved in the present application, 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.

11. 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 these objects.

12. 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.

13. 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.

14. 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.

15. 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.

16. This Court in the case of **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538** in paragraph No.37 has defined “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 lacs. 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.

17. 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.

18. 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 the 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.

19. In the light of the above well settled legal position and the provisions enumerated therein, if the facts of the present case and the material collected during the investigation are considered, it reveals that the First Information Report was lodged on 31.8.2021. Thus, the complainant did not lodge the report in respect of extortion since there was a terror created by the applicant and the other co-accused in the vicinity which

appears to be reasonable. The fact, that the First Information Report was not lodged promptly, is required to be appreciated in the light of the fact that several witnesses, whose statements were recorded, disclosed about involvement of the applicant and the other co-accused in continuous unlawful activities. The witnesses further disclosed that the applicant and the other co-accused were continuously involved in the illegal activities and four offences are registered against the applicant and the other co-accused which are similar in nature under Sections 384, 385, and 386 of the Indian Penal Code. The statements recorded during the investigation show that the applicant and the other co-accused have created terror in the vicinity. By taking cognizance of the First Information Report lodged by the complainant, statement of the complainant was recorded and it revealed during the investigation to the Investigation Officer that the applicant, who is member of organised crime syndicate, under the leadership of one Firoz Khan, committed several offences. It further revealed that the complainant was living in the premises of Tajuddin Baba Dargah constructing his house which was demolished by the applicant and the other co-accused on the pretext of order of the Government for beautification of Tajbagh Area. It further revealed that the complainant was getting rent from six shops which were near to his house. The said six shops were also taken into possession by the applicant and the other members of organised crime syndicate. Though the Collector declared that the persons, who were having shops in the said area, would get another shops and process of allotment of shops was initiated, only three shops were allotted to the complainant and the other shops were forcefully taken into possession by the members of the organised crime syndicate. In fact, the complainant was entitled to receive five shops which were allotted to him from the trust. The said shops were kept by co-accused Shahjad Khan. During the investigation, it further revealed to the Investigation Officer that the applicant and the other co-accused are not only involved in continuous unlawful activities but also they accumulated huge movable and immovable properties. It further revealed that the applicant and the other co-accused by encroaching upon the land of Baba Tajuddin Trust accumulated property worth of Rs.51,61,500/- by constructing four bungalows on the said encroached portions.

20. As far as allegation, regarding the terror is created by the applicant and the other co-accused, is concerned, statements of various witnesses, including Gulam Mohd.Kasam Shaikh, Mukhtar Ali Kamar Ali, Abdul Rashid Hajilal Mohd., Mohd.Mobin Mohd.Mosin, Sandip Nandlala Kamde, show that the

applicant and the other co-accused used to collect extortion amount from various vendors who were running their small businesses as well as hotels and bars in the vicinity. The statement of Sandip Nandlala Kamble shows that co-accused Firoz alias Abu Khan came to his Restaurant & Bar and threatened him that if he wants to run the business, he has to pay Rs.25,000/- per month to him and his gang.

21. During the investigation, statements of some police officers were also recorded including Assistant Police Inspector Mayur Babulal Chaursiya who had carried out the investigation in Crime No.429/2021 registered under Sections 384 and 386 of the Indian Penal Code. The statement of the said police official discloses that informant therein disclosed that his father was threatened to give some amount to the applicant and the other co-accused to run business in the vicinity. As they stopped to pay the amount, they were threatened and, therefore, report was lodged.

22. There are also statements of other Investigating Officers who carried out investigation in various offences against the applicant and the other co-accused.

23. The statement of a resident of the area viz. Nurjah Begam wd/o German Khan was also recorded. As per her

statement, her son was murdered by the applicant and the other co-accused as he declined to pay amount to the applicant.

24. Thus, it reveals that the applicant and the other co-accused are continuously involved in various illegal activities since the year 1995 till 2021.

25. During the investigation, the Investigating Officer has also recorded confessional statement of co-accused namely Abdul Jabbar Abdul Subhan Khan. The statement of the said co-accused also discloses that involvement of the applicant in various continuous illegal activities.

26. Thus, perusal of the investigation papers shows that not only the statements of the witnesses but also the confessional statement of the co-accused, on which the prosecution placed reliance, disclose involvement of the applicant in illegal activities.

27. Learned counsel for the applicant vehemently submitted that the provisions of the MCOC Act are not applicable as there is requirement of one or more chargesheet against the applicant of which the competent court has taken cognizance is not fulfilled. To support the said contention, he placed reliance on the decision of the Honourable Apex Court in

the case of **Mahipal Singh vs. Central Bureau of Investigating and anr** cited *supra* wherein it is held that in order to constitute an offence or organized crime, it has to be established that the accused is involved in 'continuing unlawful activity' defined in Section 2(1)(d) of the MCOC Act that is more than one chargesheets in respect of offence of nature specified in Section 2(1)(d) have been filed against him before the competent court within preceding period of ten years and the court has taken cognizance of such cases - for invocation for offence of organised crime ingredients constituting that offence must exist on the date the crime is committed or detected. Satisfying the requirements of the offence later on to bring the act within the mischief of penal provision is not permissible.

Learned counsel for the applicant submitted that in the present case, while granting sanction, the competent authority had considered three offences Crime No.61/2012, 428/2021, and 430/2021. The chargesheets were filed in Crime No.61/2012 on 16.10.2012; in Crime No.428/2021 on 30.8.2021, and in Crime No.430/2021 on 27.10.2021. The cognizance was taken by the competent court on the relevant date. The First Information Report was lodged on 31.8.2021.

28. Thus, there was no chargesheet more than one

against the applicant in which the competent court has taken cognizance.

29. Perusal of the material on record shows that in Crime No.428/2021 chargesheet was filed on 30.8.2021 and in Crime No.61/2012 the chargesheet was filed on 16.10.2012. Thus, there were two chargesheets against the applicant in which the court has taken cognizance. In both these crimes, chargesheets are filed within preceding ten years of 31.8.2021. This aspect is also considered at the subsequent time by the Honourable Apex Court in the case of **Prasad Shrikant Purohit vs. State of Maharashtra and anr, reported in 2015 ALL MR (Cri) 2853 (SC)** wherein it is held that the definition of 'continuing unlawful activity' under Section 2(1)(d) mainly refers to an activity prohibited by law. The said activity should be a cognizable offence, punishable with imprisonment of three years or more. The commission of such offence should have been undertaken either by an individual singly or by joining with others either as a member of an 'organized crime syndicate' or even if as an individual or by joining hands with others even if not as a member of a 'organized crime syndicate' such commission of an offence should have been on behalf of such syndicate. It further states that in order to come within the definition of 'continuing unlawful activity' there should have

been more than one charge-sheet filed before a competent Court within the preceding period of 10 years and that the said Court should have taken cognizance of such offence. It is further held that since Section 2(1)(d) uses the expression 'an activity' in the very opening set of expressions, which is prohibited by law, the date of such activity, namely, the third one can be taken as the relevant date for the purpose of finding out the two earlier charge-sheets in the preceding 10 years.

30. By considering the observations of the Honourable Apex Court, there were two chargesheets against the applicant when the First Information Report in the Crime No.437/2021 was registered. It is pertinent to note that initially the crime was registered under the provisions of the Indian Penal Code. During the investigation, it revealed to the Investigating Officer that the applicant along with the other co-accused is involved in various unlawful activities which are continuous in nature and, thereafter, proposal was sent to apply the provisions of the MCOC Act. Accordingly, the sanction was granted on 24.1.2022. Thus, when the sanction was granted, there was more than one chargesheet against the applicant of which cognizance was taken by the competent court.

31. Another limb of submissions of learned counsel for

the applicant was that, the offence taken into consideration was extortion of amount from various persons. In fact, ingredient of Section 383 of the Indian Penal Code which defines extortion is not fulfilled. To substantiate the said contention, learned counsel placed reliance on decisions in the case of Dinesh Bhondulal Baisware vs. The State of Mah. cited *supra* and in Criminal Application No.488/2020 and other connected matters (Hemant Dhirajlal Bankar vs. State of Mah. and anr) cited supra wherein it is held that statement is only about threatening person and no property was entrusted or delivered and, therefore, ingredients of the offence are not attracted.

32. In the present case, the statements of the various witnesses show that amounts were collected from them by threatening them on regular basis and, therefore, the contention of the learned counsel for the applicant that the offence of extortion *prima facie* is not made out is not acceptable.

33. Learned counsel for the applicant further placed reliance on the decision of the Honourable Apex Court in the case of **Rajiv Thapar and others vs. Madan Lal Kapoor** cited *surpa.* In fact, it is difficult to understand how this decision is helpful to the applicant because the Honourable Apex Court has

considered the aspect of inherent jurisdiction to quash proceeding and held that to invoke inherent jurisdiction to quash proceeding on the basis defence material, the High Court has to be fully satisfied that material produced or relied by accused (a) leads to conclusion that his/her defence is based on sound, reasonable, and indubitable facts; (b) rules out and displaces assertions contained in charges levelled against accused without necessity of recording any evidence; (c) should not have been refuted, or alternatively, cannot be justifiably refuted, being of sterling and impeccable quality i.e. a reasonable man should be persuaded to dismiss and condemn actual basis of accusations as false; and (d) whether proceeding with the trial would result in the abuse of process of the court, and would not serve the ends of the justice.

34. If the above considerations are applied, at this stage, the material on record is sufficient to conclude involvement of the applicant in the alleged offence.

35. Learned counsel for the applicant placed reliance on various decisions. However, in most of the decisions, on which the applicant relied upon, there was no direct evidence to show involvement of the applicant in unlawful activities or criminal conspiracies.

36. In the present case, sufficient material is on record to show involvement of the applicant in the alleged offence.

37. While granting sanction under the provisions of the MCOC Act, the competent authority has considered various crimes registered against the gang leader and the other members of the organised crime syndicate since years 2012 to 2022 and observed that the applicant and the gang leader committed several offences. As far as the applicant is concerned, total 11 offences are registered against him out of which four offences are registered under Sections 383 and 384 of the Indian Penal Code.

38. 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.

39. A bare perusal of the confessional statement of co-accused Abdul Jabbar Abdul Subhan Khan discloses that the applicant as well as the other co-accused was involved in continuous unlawful activities and was member of the organised crime syndicate.

40. As observed by this court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131,** 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.

41. The Honourable Apex Court in the case of **Zakir Abdul Mirajkar vs. State of Maharashtra, reported in 2022 SCC OnLine SC 1092** 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.

42. This court also in the case of **Bhikubhai Dayaram Thanki vs. State of Maharashtra, reported in 2018 SCC OnLine Bom 2636** 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.

43. The Honourable Apex Court further considered confessional statement in case of **Mohd.Farooq Abdul Gafur and anr vs. State of Maharashtra, reported in (2010)14 SCC 641** 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.

44. Thus, the material on record *prima facie* shows that the applicant was in association with the co-accused involved in the organised crime syndicate.

45. As held in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr** cited *surpa,* communication or 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.

46. 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.

47. 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.

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

49. 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.

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

51. Learned counsel for the applicant submitted that co-accused Nasim Khan, Abdul Sattar and Parvez are released on bail and, therefore, the applicant is also entitled to be released on bail on the ground of parity.

52. As observed by the Honourable Apex Court in the case of **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and anr** cited *surpa, relied* by learned Additional Public Prosecutor for the State, while applying principle of

parity, the court cannot exercise its powers in a capricious and has to consider totality of circumstances before granting bail. The parity, while granting bail, must focus upon role of accused and not only on weapon carried by accused. In deciding the aspect of parity, role attached to accused, his position in relation to incident, and to victims is of utmost importance.

53. Considering the entire material on record, a *prima facie* case is made out against the applicant which shows that he was connected with the organised crime syndicate. While considering bail applications, where the provisions of the MCOC Act are applied, the court has to come conclusion that accused is not guilty of offence on the basis of reasonable grounds. The expression ‘reasonable ground’ has not been defined in the MCOC Act. However, it connotes substantial probable causes for believing that the accused is not guilty of offence he is charged with. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on these aspects is *sine qua non* for grant of bail.

54. In the light of the above well settled legal position, at this stage, there is sufficient material on record to consider

that the applicant is guilty of the offences. At this stage, there is no reasonable ground to hold that the applicant is not guilty of the offence and, therefore, I am not inclined to grant the bail to the applicant. Accordingly, the application deserves to be rejected and the same is rejected.

The criminal application stands disposed of.

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

!! BrWankhede !!