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

CRIMINAL APPLICATION (BA) NO.593/2023
Abhishek s/o Ashutosh Singh
..vs..
State of Mah., thr.its PSO PS Sadar, Nagpur at present investigated by ACP Crime Branch Nagpur

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

Shri D.V.Chauhan, Counsel with Shri S.P.Bodalkar, Advocate for the Applicant.
Shri Nikhil Joshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 12/12/2023
PRONOUNCED ON : 21/12/2023

1. Heard.

2. By this application, moved under Section 439 of the CrPC, the applicant seeks bail in connection with Crime No.251/2020 registered with the non-applicant/police station for offences punishable under Sections 363; 364A; 384; 386; 387; 397; 504, and 506 of the IPC read with 4 and 25 of the Arms Act, 1959 and 3(1)(ii); 3(2), and 3(4) of the Maharashtra Control of Organized Crime Act (MCOC Act).

3. The applicant is arrested on 29.11.2022 and since then he is in jail.

4. Accusations against the applicant are that on 8.5.2020, complainant Gourao Dilip Dani approached the police station and lodged report alleging that on 2.5.2019 he was forcefully kidnapped from restaurant “Moti Mahal” situated at

Sadar, Nagpur and intimidated with knife and ransom of Rs.20.00 lacs was demanded by the applicant and other co-accused. As per his allegations, three of accused persons were known to him including the applicant and one Ankit Pali and Roshan Sheikh. The accused persons and the applicant were insisting him to hand over them papers of his ancestral property viz. shop and threatened him to kill and forcefully took his son in a vehicle and created terror of killing him and his son and snatched amount Rs.11,000/- from his pocket. He further alleged that prior to the incident, accused persons visited his house from time to time, demanded money, and he was constrained to leave his house and, therefore, he was staying at other place. On the basis of the aforesaid complaint, the crime was registered.

5. On 2.6.2020, the Additional Commissioner of Police, Crime Branch Nagpur, examined proposal sent by the Police Inspector, Crime Branch Nagpur for addition of Sections 3(1)(ii), 3(2), and 3(4) of the MCOC Act against six accused persons including the applicant. The Additional Commissioner of Police, in his approval order, observed that more than one chargesheet had been filed against accused persons involving offences for which punishment of three years or more of imprisonment had been prescribed and previous record shows that accused persons had committed offence of serious nature and granted approval. On invocation of the MCOC Act in the terms of the approval aforesaid, the application for pre-arrest bail of the applicant was rejected. On 5.11.2020, the Additional Director General of Police and the Commissioner of Police, Nagpur City, examined the proposal of the Assistant Commissioner of Police, Crime Branch Nagpur dated 31.10.2020 for according sanction in terms of Section 23(2) of the MCOC Act and accorded the sanction.

6. The applicant challenged the sanction order before this court in Writ Petition No.667 of 2020 which was dismissed on 5.11.2020. The order of this court is was challenged before the Honourable Apex Court in Criminal Appeal No.869/2022. The said appeal came to be dismissed by the Honourable Apex Court and, thereafter, the applicant was arrested and since then he is in jail.

7. Learned counsel Shri D.V.Chauhan for the applicant, submitted that since the date of arrest, the applicant is behind bars. Insofar as the abduction is concerned, the same is not attracted against the applicant. He submitted that the investigating agency applied Section 120B of the IPC. However, there is absolutely no material to show harbouring by the applicant. There was money lending transaction between the applicant and the wife of the complainant. As the applicant was demanding the money, this false report is lodged against him. No role is attributed to the applicant. The applicant came into picture after abduction. The demand of money is from the co-accused. No *mens rea* is attributed to the applicant. The statements of secret witnesses also not state the role of the applicant. As such, there is absolutely no material to connect the applicant with the alleged offence. Now, investigation is completed and chargesheet is filed and no purpose will be served by keeping the applicant behind bars.

8. Learned Additional Public Prosecutor Shri Nikhil Joshi for the State, strongly opposed the application on the ground that as per the report lodged by the complainant, he is owner of property which consists of shops at Dharampeth, Nagpur. The wife of the complainant advertised that the said shop is to be given on rent on "Face-Book". Accordingly, co-accused contacted

her. Co-accused Roshan Sheikh demanded original papers and threatened her. As the complainant declined to hand over the possession of the said shop and documents, he was abducted by co-accused and taken him at Ravi Bhavan whereat the applicant also approached them and threatened the complainant and demanded amount from him as well as papers. Initially, the applicant was granted bail and after addition of provisions of the MCOC Act, the bail granted to him, in the event of arrest, was cancelled. The applicant was directed to appear before investigating officer, however the applicant disobeyed the direction and, therefore, the bail granted to the applicant was cancelled and he was absconding. He further submitted that in last ten years, a gang run by gang leader Roshan Sheikh committed 17 crimes and out of them, almost seven crimes are committed by the applicant along with the gang leader. The chart submitted establishes role of the applicant. In pursuance to the instant crime, the investigating officer collected letter which shows involvement of the applicant from when the complainant was taken to Ravi Bhavan at Nagpur. Thus, participation of the applicant in the crime is crystal clear. The confessional statements of the co-accused are also recorded including gang leader Roshan Sheikh which also show the participation of the applicant. Considering the *prima facie* material against the applicant and rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected.

9. Learned counsel Shri D.V.Chauhan for the applicant, placed reliance on orders passed by this court in Criminal Application (BA) No.777/2016 on 25.10.2016 and in Criminal Application (BA) No.621/2013 along with 402/2013 and 713/2013 on 9.12.2013.

10. After having heard learned counsel Shri D.V.Chauhan for the applicant, learned Additional Public Prosecutor Shri Nikhil Joshi for the State, and perused the investigation papers, it shows that as per allegations in the report, the wife of the complainant advertised to give the shop which is ancestral property of the complainant on rent and co-accused Roshan Sheikh approached the wife of the complainant. As per allegations, accused Nos.1 and 6 along with their associates allegedly threatened the complainant. It is further alleged that co-accused Roshan Sheikh introduced accused No.6 Ankit Pali with wife of the complainant, but somehow the deal was not settled. On 2.5.2019, the complainant was threatened by demanding Rs.20.00 lacs. The complainant was called at restaurant "Moti Mahal" situated at Sadar, Nagpur and documents were demanded from him. As the complainant denied to hand over documents, he was abducted and taken to Ravi Bhavan, Nagpur. As far as the applicant is concerned, it is alleged that he also threatened the complainant by pointing the knife to the complainant and demanded Rs.20.00 lacs from him. Considering allegations against the applicant, initially, he was charged for offence punishable under Sections 363; 364A; 384; 386; 387; 397; 504, and 506b of the IPC. During the investigation, it revealed that seventeen offences are committed by the gang through gang leader Roshan Sheikh. The involvement of the applicant along with the gang leader was revealed in three offences and, therefore, provisions of the MCOC Act are applied against the applicant as well as other co-accused. While according approval, the Additional Commissioner of Police had considered the material that the applicant committed total seven offences and out of them, he committed three offences jointly with the team leader vide Crime No.482/2015 of Nandanwan Police Station and Crime No.196/2016 and 83/2017

of Sitabuldi Police Station and one offence jointly with their present crime syndicate. The applicant committed remaining two offences under Section 307 of the IPC with different members of crime syndicate and one offence under Sections 4 and 25 of the Arms Act of Ambazari Police Station with different members of their crime syndicate and chargesheets have been in all above cases against accused No.5. During investigation, statements of secret witnesses are also recorded from which the role of the applicant is revealed. The confessional statements of co-accused Roshan Sheikh and Sohail Khan are also recorded which also specify the role of the applicant. Thus, statements of independent witnesses and confessional statements connect the applicant with the alleged offence.

11. Before recording reasons, 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 contraband, 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. This Court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131** 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.”

18. 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.

19. This court, further in case of **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538**, 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.

20. The sanction order before this court was challenged by the applicant in Writ Petition No.667 of 2020 which was dismissed on 5.11.2020 and the same was subject matter of appeal, before the Honourable Apex Court, bearing Criminal Appeal No.869/2022. The Honourable Apex Court considered the approval order as well as sanction order of the Additional Commissioner of police, Crime Branch as well as the Additional Director General of Police and observed as under:

> "**15.1.** The common thread of "violence" or "threat of violence" or "unlawful means" running through all of these cases is not a matter requiring any analysis, for the same being apparent on the face of record. Significantly, the aforesaid had not been the cases involving the appellant singularly; and more significantly, the alleged team leader Roshan Sheikh is the co-accused in at least three previous cases. This is apart from the recurrence of other co-accused

persons in one case or the other. It has rightly been pointed out on behalf of the respondent-State that in order to attract MCOCA, every previous case need not be of the object of gaining pecuniary benefit alone. The cases in question, apart from involving the offences against human body and property, also include variety of other offences including those of rioting while armed with deadly weapons; causing insult to provoke breach of peace; and criminal intimidation. They also include the offence under the Arms Act. In all the referred cases, use of violence has specifically been alleged.

15.2. The crime chart aforesaid, the nature of activities and the persons involved leave nothing to doubt that the involvement of the appellant in such crimes and unlawful activities which are aimed at gaining pecuniary advantages or of gaining supremacy and thereby, leading to other unwarranted advantages is clearly made out."

The Honourable Apex Court further held, as under:

"**17.1.** The threshold requirement in terms of clause (d) of MCOCA is that of the activity/activities undertaken by the accused persons either singly or jointly, as a member of an organized crime syndicate, which involves a cognizable offence punishable with imprisonment of 3 years or more and in respect of which, more than one charge-sheets have been filed before the competent Court within 10 years and cognizance had been taken.

17.2. Crime No.13 of 2012 was registered on 11.01.2012 and involved two accused persons including the appellant and related to the offence under Section 307 IPC read with Section 34 IPC. Thus, the prescribed period and nature of offence with reference to prescribed punishment were met. Cognizance had also been taken in the said case and that is how it went to trial. The prosecution therein could examine only one person as the alleged eye-witness but, he turned hostile and did not support the case of the prosecution. The prosecution failed to examine the other witnesses including the complainant and the injured and even the non-bailable warrant issued in their relation were returned unserved with the report that they were not traceable. Thus, the prosecution failed to substantiate the charges. We shall comment on the said nature of acquittal a little later but, relevant it is to observe for the present purpose that the said case answers to all the requirements of clause (d) of Section 2(1) of MCOCA."

21. Thus, there is no dispute to the fact that at least two or more cases being of Crime No.196/2016 and Crime No.83/2017 of Sitabuldi Police Station which are pending wherein

chargesheets have been filed clearly meeting with all essential requirements to attract the provisions of the MCOC Act. In both these cases, the applicant is an accused along with a few common co-accused including team leader Roshan Sheikh wherein cognizance had already been taken. The confessional statement of the co-accused shows the involvement of the applicant and the sanctioning authority had also considered the same along with the other material. The Honourable Apex Court, while dismissing the appeal against the sanction, considered and held that contentions on behalf of the appellant remain baseless and denied to interfere with the order granting the sanction.

22. Thus, a specific case is made out against the applicant to show his involvement in the alleged offence as well as the previous offence.

23. Thus, the role of the applicant, relating to commission of the organized crime and nexus of the applicant to show he is a member of the organized crime syndicate, is established and, therefore, the Honourable Apex Court has not interfered with the order of sanction.

24. When the provisions of the MCOC Act are attracted against the applicant and while considering the bail application, rigor of Section 21(4) is to be taken into consideration. The provisions of the MCOC Act special provisions for prevention and control of organized crime and for coping with, criminal activity by organized crime syndicate or gang. The statements and objects of the Act are 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.

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

26. 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 by the Honourable Apex Court 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.

27. 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.

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

29. Considering the material on record and observations made by the Honourable Apex Court, there is a *prima facie* material to show that the applicant is connected with the organized syndicate.

30. 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.

31. 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.

32. In the light of the above well settled legal position, at this stage, there is a sufficient material on record to show the involvement of the applicant and there is a reasonable ground to hold him guilty of offences and, therefore, I am not inclined to grant the bail to the applicant.

33. The application stands **rejected** accordingly.

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

!! BrWankhede !!