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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1415 OF 2023**

SOHAIL @ ARBAZ MUNAF WATANGI ..APPLICANT
VS.

THE STATE OF MAHARASHTRA ..RESPONDENT

Adv. Umesh H. Pawar a/w Adv. Sagar R. Sonawane for the applicant.

Mr. Balraj Kulkarni, APP for the State.

Mr. Wagh, Police Head Constable, SDPO Office Gadhinglaj, District Kolhapur.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 22, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of the offence punishable under Sections 364(A), 384, 386, 388, 397, 327, 452, 120(B) of the Indian Penal Code (hereafter 'IPC' for short) and under Sections 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereafter 'MCOC Act' for short) registered on 21.11.2021 vide C.R. No.552 of 2021 with Juna Rajwada Police Station, Kolhapur.

3. There are in all seven accused. The applicant is the accused No.2. The applicant was arrested on 21.11.2021 and enlarged on bail on 26.11.2021. After the provisions of MCOC Act came to be invoked the applicant was rearrested on 24.12.2021. The applicant is now in custody for more than two years and two months. I am informed that even the charge has not been framed.

4. My attention is invited to the order dated 24.11.2023 passed below Exhibit 33 in Special Case No.92 of 2022 by the trial Court in respect of co-accused – Lukman Shakil Solapure (accused No.5) enlarging him on bail. The role of the applicant is no doubt different from the co-accused - Lukman Shakil Solapure who has been enlarged on bail. Nonetheless for the ease of reference it would be convenient to reproduce the relevant observations of the trial Court which read thus :-

"2. This is a case popularly called as 'honey trap'. It was alleged that all the accused formed conspiracy with the juvenile in conflict-with-law namely Shruti, aged 17 years and asked her to chat with the informant Dnyanesh Dattatraya Hawal, a cloth merchant on his Whatsapp number. Accordingly, Shruti continued Whatsapp chatting and as a result of this, the informant expressed his desire to meet her personally on 13/11/2021. The informant came with his Maruti Breeza Car bearing No.MH-09-FJ-5524 near Savitribai Phule Hospital, where

Shruti was waiting for him. She sat in the car and the informant took her to his flat at Ambai Tank. Shruti wanted to get fresh and she went in the washroom and at the same time, the bell of the flat of the informant rang. The informant opened the door and seven persons entered in his flat and went to the bedroom. Eventually, Shruti removed her top and one of the persons entered in the room video-graphed that scene.

3. The persons who entered in the room, threatened the informant to come with them to the Police Station as they wanted to lodge complaint of rape against him. Three persons sat in the car of the informant and took him to the lonely place near village Kerle on Panhala road. Remaining four persons followed them by their two motorcycles. They assaulted the informant by fists and kicks blows. One of them picked up big stone and threatened to hit him by demanding money from him. The informant took out the cash of Rs.1,50,000/- from his car and paid that amount to them. They also obtained three blank cheques and took the informant to Muthoot Finance at Bagal Chowk, Kolhapur and asked him to pledge his gold ornaments consisting three rings and one chain (43 Gms). He pledged the same for Rs.1,00,000/- and by this way, they took Rs.2,50,000/- and three blank cheques from the informant and fled away. Subsequently, the accused started threatening the informant on his phone that he shall pay additional Rs. 10,00,000/- to save himself from prosecution under the case for rape on Shruti. The informant therefore, lodged the complaint against the accused on 21/11/2021 and the crime came to be registered against them under IPC sections.

6. Speaking about application of the offences under MCOCA and the grounds for bail, Shri. S.R. Shinde, the learned advocate for the applicant has relied upon the judgment of the Hon'ble Bombay High Court in Bhupendra Golu Suryakant Borkar vs. State of Maharashtra [2017 ALL MR (Cri.) 1561] wherein, it is held that to reject the bail under MCOCA, apart from prima facie case, possibility of committing similar crime by accused also to be shown for rejecting his application. Commonality of co-accused and commonality of offences are some indications in that regard. The learned advocate submits that as regards present applicant, there is no commonality of the offences qua the co-accused. They are his individual offences and not the offences committed as being the member of the Organized Crime Syndicate.

7. The learned advocate further submits that there is no material against the applicant to show that he was involved in continuing unlawful activity within the meaning of Sec. 2(d) of

MCOCA. To lend support to this submission, he has relied on judgment in State of Maharashtra Vs. Rahul Ramchandra Taru [2011 ALL MR (Cri) 2100] wherein' it is held that-

"In order to constitute "continuing unlawful activity following requirements of law should be satisfied :-

- i. more than one chargesheet, alleging commission of cognizable offence punishable with imprisonment of three years or more;
- ii. a chargesheet should consists of averments, alleging unlawful activity undertaken either singly or jointly by the accused,
- iii. as a member of organized crime syndicate or on behalf of such syndicate;
- iv. the cognizance of such offence is taken by the competent court.

In order to bring an alleged act within the ambit of the MCOCA, the aforementioned requirements are mandatory. The word "in respect of which" occurring in the definition clause of "continuing unlawful activity" connotes that it is not a normal chargesheet, alleging commission of cognizable offence punishable with imprisonment of 3 years or more. The chargesheet sans allegations that the alleged act is undertaken either singly or jointly by the accused who is a member of an organized crimes syndicate or is undertaken on behalf of such syndicate, would not fall within the ambit of the expression "continuing unlawful activity", occurring in MCOCA.

In Prafulla s/o. Uddhav Shende vs. State of Maharashtra, (2009 ALL MR(Cri.) 870), the learned single Judge of this court while dealing with the bunch of appeals arising out of judgments passed by the Special Court at Nagpur, placed reliance on the various decisions, mainly, the decision in Ranjeetsingh Brahmajeetsing Sharma's case (supra), also made a reference to the case of Sherbahadur Akram Khan (supra) and observed in paragraphs 29, 43 and 44 that:

29. Since the definitions, though intertwined in a cyclic order, are clear and unambiguous, it would follow that each ingredient in the definitions, or the alternative thereof provided by the definitions themselves, would have to be proved. Viewed thus, for charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons

concerned have indulged in :

- (i) an activity,
- (ii) which is prohibited by law,
- (iii) which is a cognizable offence punishable with imprisonment for three years or more,
- (iv) undertaken either singly or jointly,
- (v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate.
- (vi)(a) in respect of similar activities (in the past) more than one chargesheets have been filed in competent court within the preceding period of ten years,
 - (b) and the court has taken cognizance of such offence.
- (vi) the activity is undertaken by :
 - (a) violence, or
 - (b) threat of violence, or intimidation or
 - (c) coercion or
 - (d) other unlawful means.
- (vii)(a) with the object of gaining pecuniary benefits or gaining undue or other advantage or himself or any other person, or
 - (b) with the object of promoting insurgency.

43. This fortifies the conclusion that mere proof of filing chargesheets in the past is not enough. It is only one of the requisites for constituting offence of organised crime. If only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of Article 20(1) of the Constitution and possibly Article 20(2) as well, (and in any case Section 300, Cr.P.C.). Had these judgments of the Supreme Court and Division Benches of this Court been cited before the learned single Judge deciding *Amarsingh Vs. State* (2006 ALL MR (Cri.)407) the learned Single Judge, without doubt, would not have held that the matter was simply one of an arithmetical equation. The said judgment cannot be reconciled with the judgments of division benches in *Jaising Vs. State* (2003 ALL MR (Cri) 1506 and *Bharat Shah vs. State* (2003, ALL MR (Cri) 1061) which I am bound to follow.

44. Therefore, since the previous criminal history of the applicants denotes that they had been or are being separately charged/tried for those offence before competent courts, there is no question of such offences constituting offence of organised crime."

8. In Shri Girish Kumaran Nayar Vs. The State of Maharashtra [2021 ALL MR (Cri.) 1409], the nexus between past criminal activities present crime were not established. There was nothing to show that past offences were committed by applicant as member of or on behalf of organized crime syndicate. It was therefore, held that mere proof of past chargesheet is not enough. Investigation was completed, the applicant was in custody since last 4 years, the trial was not likely to commence within reasonable time and therefore, it was a fit case to grant bail to the applicant.

9. In Sagar Laxman Sonawane Vs. The State of Maharashtra [2021 ALL MR (cRI) 1087], the bail was cancelled on approval to prosecute the applicant under Sec.3 of MCOCA. The applicant was arraigned in five previous offences on disclosure statement of co-accused. It was held that the statement of co-accused was recorded while in custody, the proof of which is prohibited under Sec.25 of the Evidence Act. As such, provisions of Sec.23(4) of MCOCA would not be hindrance in releasing the applicant on bail.

10. In Hiru @ Hiranman Jagdisxh Gangwani Vs. The State of Maharashtra [2022 ALL MR (Cri.) 1444], it is held that reliance on mere hear say statement from one of co-accused cannot be placed. Nexus between past crime and present crime cannot be established. There was no material sufficient to show involvement of applicant as a member of organized crime syndicate. The accused was therefore, released on bail."

5. Learned APP opposed the application for bail and submitted that the applicant is actively involved in the commission of the offence. It is submitted that the applicant is a member of organized crime syndicate and hence twin conditions are not satisfied in the present case. It is further pointed out that there are criminal antecedents against the

applicant.

6. So far as the role of the applicant is concerned, the applicant had entered the flat and assaulted the complainant. The applicant along with other accused had then taken the complainant to a lonely place near village Kerle on Panhala road where the informant was again assaulted by fists and kick blows.

7. So far as the antecedents are concerned, there is C.R. No.263 of 2020 registered against the applicant with Laxmipuri Police Station, Kolhapur under Sections 307, 354, 141, 143, 147, 149, 452, 427, 323, 504, 506, 188, 269, 270, 452, 120B of the IPC. The said offence is common with the co-accused – Lukman Shakil Solapure. However, the applicant but for the present offence, does not have any offence in common with the gang leader Sagar Pandurang Mane. Even the co-accused – Lukman Shakil Solapure who has been enlarged on bail does not have any offence in common with the gang leader. Prima facie on the basis of the materials, therefore it is difficult to form an opinion that the applicant is a member of the organized crime syndicate

of which the main accused Sagar Mane is the gang leader. The offence which is registered against the applicant with the Laxmipuri Police Station is an individual offence and does not appear to be in connection of the organized crime syndicate. I am therefore satisfied that there are reasonable grounds for believing that the applicant is not guilty of such offence. Considering the role of the applicant I am inclined to impose stringent conditions and having regard to the materials on record I am of the further opinion that the applicant is not likely to commit any offence while on bail. The charge-sheet has been filed. The applicant is in custody for more than two years and two months. Even the charge has not been framed. The trial is likely to take a long time to conclude. The applicant does not appear to be a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Sohail @ Arbaz Munaf Watangi in connection with C.R. No.552 of 2021 registered with Juna Rajwada Police Station shall be released on bail on his furnishing P.R. Bond of Rs.50,000/- with one or

more local sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Juna Rajwada Police Station once in a month every first Wednesday of the month between 11.00 a.m. and 1.00 p.m.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

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

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the area of Kolhapur District after being released on bail, till the trial concludes. It is open for the applicant to apply for modification of this condition before the trial Court after a reasonable time.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

8. The application is disposed of.

(M. S. KARNIK, J.)