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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1964 OF 2022

Laxman Rama Pawar @ Mahakal .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. Santosh Deshpande i/b Mr. S.M. Deshpande & Associate for
the applicant

Mr. A.A. Palkar, APP for the respondent – State

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 10th JANUARY, 2024

PRONOUNCED ON : 16th JANUARY, 2024

P.C.

1. The applicant is one of the 11 accused, who are being prosecuted for the offences punishable under Sections 307, 120(B) of the Indian Penal Code r/w Sections 3 and 25 of the Arms Act and subsequently by invoking stringent provisions of the Maharashtra Control of Organized Crimes Act (for short “MCOC Act”) by the DCB, CID vide C.R. No.11 of 2018, C.R. No.19 of 2019 and C.R. No.99 of 2015. Initially, an offence against the applicant and the rest of the accused came to be registered at Vikhroli Police Station vide C.R. No.509 of 2019 on 19.12.2019.

2. A few facts germane for disposal of this application can be summarized as follows.

3. The first informant, on 19.12.2019 after worshipping in the Sai Temple was sitting in the office of the temple. The accused no.4 – Sagar came into the office and opened a fire by means of a gun. The bullet fired from the gun pierced into his arm, resulting into a bleeding injury. However, the first informant along with his son apprehended the assailant on the spot. Subsequently, accused nos. 1 and 2 also came to be arrested on 24.12.2019.

4. During the course of investigation, statements of the witnesses came to be recorded, a memorandum panchanama under Section 27 of the Indian Evidence Act was also drawn and when it revealed that it was an act of an organized crime syndicate, prior approval of the competent officer was obtained under Section 23(1)(a) of the MCOC Act. Previous sanction came to be accorded by the Commissioner of Police, Mumbai under Section 23(2) of the MCOC Act against the 10 accused.

5. After the investigation, a charge-sheet came to be filed. An application for bail preferred by the applicant in the trial Court

came to be rejected on 31.03.2021. The second application also came to be rejected on 29.04.2022.

6. At the outset, Mr. Deshpande, learned Counsel for the applicant in his elaborate arguments tried to demonstrate several lacunae in the prosecutions case indicating how the applicant has been implicated falsely on the basis of concocted material *sans* any nexus either direct or indirect in the commission of the offence as well as a member of an organized crime syndicate. Mr. Deshpande would argue that the First Information Report came to be lodged against an unknown person and, subsequently, the Investigating Agency had falsely shown his presence on the spot, when in fact, he is neither an assailant nor was present at the scene on the date of incident. Mr. Deshpande would further argue that neither test identification parade has been conducted nor there is any witness who had indicated complicity of the applicant in the said crime.

7. The only material, according to the learned Counsel, put-forth by the prosecution is in the form of confessional statement of a co-accused and nothing else. The Court below had rejected his application for bail only on the premise that he had been named by

a co-accused in his confessional statement. The prosecution has not shown that the applicant had indulged in continuing unlawful activities nor there is any shred of evidence to show that he is a member of an organized crime syndicate or even for that matter, acted on behalf of such syndicate.

8. The Counsel has also questioned the previous sanction granted by the Commissioner of Police, inasmuch as the kingpin of the organized crime syndicate namely, Prasad Pujari, who is said to have been chargesheeted with more than two charge-sheets namely; DCB, CID vide C.R. No.11 of 2018, C.R. No.19 of 2019 and C.R. No.99 of 2015 do not indicate in what manner and under which offences he was involved in continuing unlawful activities. There is no material indicating the involvement of the applicant in the organized crime syndicate of Prasad Pujari.

9. Mr. Palkar, learned APP while strongly objecting release of the applicant on bail, submits that the applicant is a member of an organized crime syndicate who had indulged in continuing unlawful activities which is evident from his role in providing shelter to the prime accused, who had shot at the first informant. Mr. Palkar

would invite my attention to the confessional statement of the accused no.3 – Umesh Shetty indicating complicity of the applicant in this crime. According to Mr. Palkar, the role of the applicant is essentially is that of an abettor as provided in Section 2(1)(a)(i)(iii) of the MCOC Act, meaning thereby not only he harboured the assailant but also facilitated him by providing arms. Mr. Palkar would argue that in view of rigours of Section 21(4) of the MCOC Act, the applicant is not entitled to be enlarged on bail in light of the fact that there are reasonable grounds for believing that he is guilty of said offence and even it is quite possible that in case of his release, he might commit any offence while on bail.

10. Indubitably, accused no.2 Anand Phadtare and accused no.9 – mother of the kingpin of an organized crime syndicate have already been released on bail and the orders have attained finality since the prosecution has not challenged those orders in the Supreme Court.

11. This Court in an order granting bail to accused no.2 - Anand Phadtare observed that there are no criminal antecedents against him. Rather, accused no.9 who is the mother of the kingpin Prasad Pujari has several crimes at her discredit not only under the

provisions of IPC but also under the provisions of MCOC Act. A prominent role has been attributed to her in the instant crime, in the sense, she made financial provisions to execute the plan of eliminating the first informant.

12. Mr. Deshpande was at pains to persuade me to highlight significant aspects, namely absence of name of the applicant in the alleged conspiracy, absence of nexus with Prasad Pujari and last but not least his absence at the scene of crime.

13. Crucial material *qua* the applicant is the confessional statement of accused no.3- Umesh Shetty (for short 'Umesh'), recorded on 11.01.2020 by DCP Zone-11, Mumbai namely Dr. Mohan Dahikar under Section 18 of the MCOC Act.

14. A perusal of the same reveals that the applicant was introduced with co-accused – Umesh by the shooter accused no.4 - Sagar. As per the instructions of Prasad Pujari, the applicant and accused no.4 – Sagar had been to the house of the applicant where Vijay and the applicant had shown him a silver coloured country made weapon (which is worded as “सामान” – referring to a fire arm). The applicant had also shown photographs of the first informant to

Umesh by informing that Anna alias Prasad Pujari (kingpin) had shooter to eliminate the first informant. The confessional statement further reveals that after an overnight stay at the applicant's house, Umesh and Sagar followed the applicant on a motor bike on the following day. The applicant was heading them towards the house of the "target" in an auto rickshaw. Since they could not notice the first informant due to rains, they returned to applicant's house.

15. Meanwhile, as per the command of the kingpin Prasad Pujari, accused no.3 - Umesh had arranged a motor bike with no license plate from his childhood friend, accused no.2 – Anand Phadtare by categorically informing him (Anand) the purpose for which it was required and also promised to pay him money from the kingpin. Accordingly, accused no.2 – Anand Phadtare provided a black coloured Pulsar motor bike, without number plate, to the applicant. The said motor bike was used in the commission of the offence on 19.12.2019.

16. No sooner did shooter Sagar opened fire at the injured, he was caught red-handed on the spot by the public. However, accused

no.3 - Umesh made his escape good on the motor bike provided by accused no.2 – Anand Phadtare. It is a matter of record that confessional statement of accused no.3 - Umesh refers only “Laxman” without giving details of his father’s name or surname. No Test Identification Parade appears to have been conducted to confirm the identity of the applicant. Be that as it may.

17. Role attributed to the applicant, as an abettor or a facilitator is quite apparent and the same is not lesser than the role attributed to accused no.2 – Anand Phadtare. As such, on parity, his prayer for bail will have to be considered.

18. An authoritative pronouncement of the Hon’ble Supreme Court in case of *Kavitha Lankesh Vs. State of Karnataka & Ors. (2022) 12 SCC 753* is pressed into service by Mr. Palkar, learned APP wherein the Supreme Court expounded the scope and ambit of Section 2(1)(a) of the MCOC Act. Para 29 of the judgment is extracted below for advantage.

29. We may hasten to add that the fact that the Investigating Agency was unable to collect material during investigation against the writ petitioner Mohan Nayak N. for the offence under Section 3(1) of the 2000 Act, does not mean that the information regarding

commission of a crime by him within the meaning of Sections 3(2), 3(3) or 3(4) of the 2000 Act cannot be recorded and investigated against him as being a member of the organized crime syndicate and/or having played role of an abettor, being party to the conspiracy to commit organised crime or of being a facilitator, as the case may be. For the latter category of offence, it is not essential that more than two charge-sheets have been filed against the person so named, before a competent court within the preceding period of ten years and that court had taken cognizance of such offence. That requirement applies essentially to an offence punishable only under Section 3(1) of the 2000 Act.

*30. As regards offences punishable under Sections 3(2), 3(3), 3(4) or 3(5), it can proceed against any person sans such previous offence registered against him, if there is material to indicate that he happens to be a member of the organized crime syndicate who had committed the offences in question and it can be established that there is material about his nexus with the accused who is a member of the organized crime syndicate. This position is expounded in the case of *Ranjitsingh Brahmajeetsing Sharma vs. State of Maharashtra* (2005) 5 SCC 294: 2005 SCC (Cri.) 1057 which has been quoted with approval in para 85 of the judgment in *Prasad Shrikant Purohit vs. State of Maharashtra*, (2015) 7 SCC 440 : (2015) 3 SCC (Cri.) 138.” ...*

(emphasis supplied)

19. Mr. Palkar would also press into service another judgment of the Hon'ble Supreme Court in case of *Zakir Abdul Mirajkar Vs. State of Maharashtra & Ors.* 2022 SCC Online SC 1092 wherein it is held that more than one charge-sheet is not required to be filed with respect to each of the accused against whom the provisions of

MCOC Act have been invoked. The Hon'ble Supreme Court in case of Zakir Abdul Mirajkar (supra) has followed a ratio laid down by the said Court in the case of ***Govind Sakharam Ubhe Vs. State of Maharashtra*** (Criminal Appeal No.18 of 2009) (Coram: Smt. Ranjana Desai & R.G. Ketkar, JJ). Para 37 of the judgment in the case of Govind Ubhe (supra) reads thus :-

“37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines ‘continuing unlawful activity’ sets down a period of 10 years within which more than one charge-sheet have to be filed. 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 MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA 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 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime

committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. 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."

20. I am afraid I cannot buy the argument of Mr. Deshpande that no chargesheet *qua* the applicant has been filed by the prosecution indicating his nexus with the kingpin of the organized crime syndicate.

21. It can thus be seen that even though no chargesheet has been tendered *qua* the applicant indicating any nexus with the kingpin of the organized crime syndicate, yet, his role as an abettor or a facilitator seemed in the confessional statement of Umesh. There is no requirement of two chargesheets when a crime is registered within the meaning of Section 3(2), 3(3) or 3(4) of the MCOC Act.

22. Learned APP drew my attention to a chart indicating link and connections between the kingpin of the organized crime syndicate – Prasad Pujari and the other members through their respective cell

phones. Even if one throws a glance to the said chart, at this stage, it appears that there is no direct conversation between the kingpin and the applicant. However, the applicant appears to have been in touch with other co-accused. This aspect in itself would not come in the way of considering the case of the applicant for the purpose of granting him bail.

23. It is not necessary to multiply authorities relied upon by Mr. Deshpande in support of his contention. Suffice it to say that this Court in an identical case *Anil Shankar Patil Vs. The State of Maharashtra* (Bail Application No.33 of 2022) (Coram: A.S. Gadkari, J) dated 29.07.2022 drew support from various case laws tendered across the bar pursuant to which the applicant – Anil Patil was enlarged on bail. In case of Anil Patil (supra) the co-ordinate bench of this Court considered prolonged incarceration of the applicant of five years without trial coupled with his fundamental right to have a speedy trial despite statutory restrictions contemplated under Section 21(4) of the MCOC Act. This Court has drawn support from the ratio laid down by the Supreme Court, apart from other precedents, in the case of *Union of India Vs. K.A. Najeer*, (2021) 3 SCC 713. Para 10, 11, 12, 15 and 17 of the said

judgment read thus:-

“10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of UAPA.

11. The High Court’s view draws support from a batch of decisions of this Court, including in Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616 : 1996 SCC (Cri) 366, laying down that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the undertrial on bail. It would be useful to quote the following observations from the cited case: (SCC p.622, para 10)

“10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh case [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] , on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.”

(emphasis supplied)

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987

or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi) (1999) 9 SCC 252 : 1999 SCC (Cri) 1156, Babba v. State of Maharashtra (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118 and Umarmia v. State of Gujarat (2017) 2 SCC 731 : (2017) 2 SCC (Cri) 114 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.”

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings,

courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

24. There can be no second thought on the rigours of Section 21(4) of the MCOC Act, nevertheless, it is essential to observe the culpability and extent of the applicant’s involvement in the commission of an organized crime either directly or indirectly, as discussed hereinabove.

25. The applicant has already spent around four years in the custody with little possibility of early completion of the trial. Apart from the ground of parity, he cannot be detained indefinitely as an under trial.

26. Despite statutory restrictions of Section 21(4) of the MCOC Act, ability of constitutional Court, *per se*, does not oust its powers to grant bail to under trials on the grounds of violation of part III of the Constitution.

27. Needless to state that these are *prima facie* observations *sans* merits of the case only to the extent of considering application for bail. The trial Court shall not get influenced with the observations made hereinabove.

28. Having made a harmonious analysis of relevant aspects, following order is expedient.

ORDER

(i) The application is allowed.

(ii) The applicant – Laxman Rama Pawar @ Mahakal be released on executing a PR bond in the sum of Rs.1,00,000/- (Rupees One lac) with one or two sureties in the like amount to the satisfaction of the trial Court in C.R. No.509 of 2019 by the Vikhroli Police Station investigated by DCB CID vide CR No.230 of 2019.

(iii) The applicant shall report Vikhoroli Police Station on every Sunday between 3.00 p.m. to 5.00 p.m, till the conclusion of the trial.

(iv) 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.

(v) The applicant shall furnish his cell number as well as residential address to the Investigating Officer. In case, there is any change in the cell number or the residential address, the same shall be informed to the Investigating Agency.

(vi) The applicant shall surrender his passport with the Investigating Officer, if any.

(vii) Needless to state that in case of breach of any of the condition hereinabove, liberty to the prosecution to pray for cancellation of his bail.

29. The application stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)