

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

ANTICIPATORY BAIL APPLICATION NO. 1696 OF 2024

Monika Shrikant Patil	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Ms. Shubhangi Parulekar for the Applicant.
Mr. Tanveer G. Khan, APP for Respondent-State.
Mr. Ganesh Atave, PSI, Pimpri Police Station, Pune.

**CORAM: MANISH PITALE, J.
DATE : 21st AUGUST 2024**

P.C. :

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

2. The applicant has approached this Court apprehending arrest in connection with FIR No. 1113 of 2023 dated 14th November 2023 registered at Pimpri Police Station, Dist. Pimpri-Chinchwad, for offences under Sections 386, 387, 504 and 506 read with 34 of the Indian Penal Code, 1860 (IPC), Sections 4 and 25 of the Arms Act, 1959, Sections 37(1), 37(3) and 135 of the Maharashtra Police Act, 1959 and Section 7 of the Criminal Law (Amendment) Act, 2013.

3. In the present case, subsequently the provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act)

have been invoked and offences under Sections 3(1)(ii), 3(3) and 3(4) of the MCOC Act have been registered. The competent authority has granted sanction for invoking the aforementioned provisions.

4. The FIR in the present case was registered against the two named accused persons, Aakash Gaikwad and Ashish Gorkha, on information given by the informant on 14th November 2023. The informant stated that the two named accused persons came to his shop of fire crackers and demanded amount, threatening to cause injury or death to the informant. On this basis, the FIR was registered for the said offences.

5. One of the named accused person i.e. Ashish Gorkha remained absconding for about ten days. He was arrested in connection with another FIR registered against him and thereafter, he was formally arrested in the present case also. It came to light that during the period when he was absconding, he stayed with the applicant, who is his cousin. On the aforesaid information coming to light, the applicant was also arraigned as an accused with offence under Section 212 of the IPC, pertaining to harbouring an offender, being invoked against her. The competent authority under the MCOC Act was approached for granting sanction for invoking the aforementioned provisions of the MCOC Act. The sanction order was granted on 25th December 2023. Consequently, offences under Section 3(3) of the MCOC Act, pertaining to harbouring or concealing a member of an organized crime

syndicate, has been invoked against the applicant.

6. The learned counsel for the applicant submits that the applicant has no connection with the crime in the present case. She is roped in only because she is a cousin of the aforesaid co-accused Ashish Gorkha. It is submitted that the applicant is a woman, who is the mother of a four years old daughter. It is submitted that the applicant was not aware about the background in which the co-accused i.e. her cousin-Ashish Gorkha stayed with her. The ingredients of the offence under Section 212 of the IPC and the provisions of the MCOC Act are not made out and hence, this Court may consider allowing the present application.

7. As regards section 21(3) of the MCOC Act, whereby it is specified that Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.) shall not apply in relation to a case involving arrest of a person on an accusation of having committed an offence punishable under the MCOC Act, reliance was placed on judgments and orders passed by this Court, wherein it has been held that if it is shown that even *prima facie* invocation of the provisions of the MCOC Act cannot be said to be made out, the bar under Section 21(3) of the MCOC Act will not apply.

8. On the other hand, the learned APP submitted that there is sufficient material to indicate that the applicant harboured co-accused-Ashish Gorkha and that offences under Section 212 of the IPC and under Section 3(3) of the MCOC Act are made out. It is

submitted that the contentions raised on behalf of the applicant could be a matter for trial and that, in any case, under Section 21(3) of the MCOC Act, there is statutory bar, which prevents entertaining the application for anticipatory bail.

9. At the outset, it would be appropriate to first address the question, as to whether the bar under Section 21(3) of the MCOC Act comes in the way of entertaining the present application. The language of Section 21(3) of the MCOC Act is clear and it provides that nothing in Section 438 of the Cr.P.C. pertaining to anticipatory bail, would apply in relation to any case involving arrest of a person on an accusation of having committed an offence punishable under this Act. In the present case, the applicant is certainly accused of having committed offence under the provisions of the MCOC Act. But, the aforesaid bar would not operate if the applicant is able to demonstrate that even if the material on record is accepted, the invocation of the provisions of the MCOC Act in the facts and circumstances of the present case can be demonstrated to be bad or without any basis. This Court has dealt with such situations and yet, prayer for anticipatory bail has been considered and granted, depending upon the facts and circumstances of the individual case. In the case of ***Iman s/o Abdul Rahim Khan v/s. State of Maharashtra*** (order dated 3rd July 2024 passed by this Court in Criminal Application (ABA) No. 10 of 2024), upon finding that invocation of provisions of MCOC Act appeared to be doubtful, this Court rendered a finding that the

rigor under Section 21(3) of the MCOC Act may not come into play and that the applicant therein was found to be entitled for pre-arrest bail.

10. Similarly, in the case of ***Shabhana Parveen Inayatullah Shaikh v/s. The State of Maharashtra*** (judgment and order dated 13th July 2021 passed by Division Bench of this Court in Writ Petition No. 1959 of 2021), it was held that the embargo under Section 21(3) of the MCOC Act may not come into play, if the applicant is able to demonstrate that *prima facie*, invocation of such provisions is unsustainable. A similar view was taken by the Division Bench of this Court in the case of ***Surjitsingh Bhagatsingh Gambhir v/s. The State of Maharashtra*** (judgment and order dated 13th September 2019 passed in Writ Petition No. 913 of 2019).

11. Hence, this Court is of the opinion that the individual facts of the present case can be appreciated by this Court, to reach a finding on the aspect of *prima facie* unsustainable invocation of the provisions of MCOC Act and in that context, consider the embargo under Section 21(3) of the MCOC Act.

12. In the present case, this Court finds that the applicant is alleged to have harboured co-accused Ashish Gorkha and in that background, offence under Section 212 of the IPC has been registered against the applicant. A perusal of Section 212 of the IPC, which pertains to harbouring of an offender, shows that the essential ingredient is that the person against whom the allegation

of harbouring an offender is made is aware of or knows or has reason to believe such a person, who has been allegedly harboured, as being an offender. Section 3(3) of the MCOC Act also refers to harbouring or concealing a member of an organized crime syndicate.

13. In order to invoke the aforesaid provisions, this Court is of the opinion that there should be material to show a *prima facie* case against the accused about knowingly harbouring an offender. In the present case, the applicant is a cousin sister of the co-accused Ashish Gorkha. Statement of a neighbour of the applicant found in the record, shows that when the said neighbour enquired from the applicant about the presence of co-accused Ashish Gorkha in the house of the applicant, she had said that the said Ashish Gorkha had come to her place for a few days, as there was some quarrel at his place. The aforesaid statement in itself does not indicate the basic ingredient of the aforesaid offence of harbouring or concealing an offender. Being a cousin sister of the co-accused Ashish Gorkha, it can be said that the applicant allowed him to stay in her house, being his sister. It is an admitted position that the applicant does not have any criminal antecedents and that she is a housewife with a four years old daughter.

14. There is otherwise nothing to indicate any link between the applicant and the activities of the co-accused persons, which has led to registration of the aforesaid offences against them.

15. Considering the material on record, this Court is of the opinion that a strong *prima facie* case is made out by the applicant to claim that the basic ingredients of the offences under Section 212 of the IPC and Section 3(3) of the MCOC Act are not made out. In such a situation, the bar under Section 21(3) of the MCOC Act may not apply and therefore, the present application can be entertained.

16. Considering the material on record and the aforementioned conclusions arrived at by this Court, a case is made out by the applicant for granting anticipatory bail, particularly when the applicant is ready to cooperate with the investigation.

17. In view of the above, the application is allowed in the following terms :

(a) In the event the applicant is arrested in connection with FIR No. 1113 of 2023 dated 14th November 2023 registered at Pimpri Police Station, Dist. Pimpri-Chinchwad, she shall be released on bail on furnishing PR Bond of Rs.25,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(b) The applicant shall cooperate with the investigation and she shall remain present before the Investigating Officer, as and when called by the Investigating Officer.

(c) The applicant shall not tamper with the evidence of

the prosecution in any manner. She shall not influence the informant, witnesses or any other person concerned with the case.

18. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

19. The application is disposed of.

MANISH PITALE, J.