IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application No. 3963 of 2023

Digamber Rohindas Agawane
Age 42 years, Occ. Agriculture
and Business, R/o. 'Swaraj'
Bungalow, At Post Girvi,
Tal. Phaltan, Dist. Satara. ...Applicant

Vs.

The State of Maharashtra
Through Senior Police Inspector,
Phaltan Rural Police Station,
Tal. Phaltan, Dist. Satara ...Respondent

With
Interim Application No. 518 of 2024
in
Criminal Bail Application No. 3963 of 2023

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Vs.

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Through Senior Police Inspector,
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Tal. Phaltan, Dist. Satara ...Respondent

Mr SB Talekar a/w Ms Madhvi Ayyappan i/b Talekar and Associates, for the Applicant.
Senior Advocate Mr Harshad V Nimbalkar, Special Public Prosecutor assisted by Mr Arfan Sait, Additional Public Prosecutor a/w Mr Satyam Nimbalkar, a/w Mr Harshwardhan Pawar a/w Mr Abhishek Arote a/w Mr Padmasinh Patil a/w Mr Aman Pawar, for Respondent / State.

Coram: R.N. Laddha, J.
Date: 19 November 2024

P.C.:

The learned Counsel for the applicant did not pursue the interim application; therefore, it is dismissed as not pressed.

2. The applicant has preferred the present application seeking bail in connection with CR No.892 of 2022, registered at Phaltan Rural Police Station, Satara, for offences punishable under Sections 307, 341, 343, 364, 364(A), 367, 384, 385, 386, 387, 392, 394, 420, 465, 467, 468, 471, 504 and 506 read with 34 of the Indian Penal Code; Sections 3 read with 25 of the Arms Act, 1959; and Sections 3(1)(ii), 3(2) and 2(4) of the Maharashtra Control of Organised Crime Act, 1999 ('MCOC Act').

3. It is the case of the prosecution that the informant, Ranjit Dhumal, and Pranay Matkar are directors of JD Chemicals and Fertilisers Private Limited. Pranay Matkar initally worked at

Aayur All in One Shopee Private Limited, owned by the applicant, Digambar Aagwane. When Pranay Matkar decided to leave the company, the applicant, considering his qualifications and experience in the fertiliser industry, decided to start a fertiliser company and assured Pranay Matkar of a director position. The informant Ranjit met the applicant in 2014. At that time, Ranjit was unemployed and, knowing that the applicant was a political leader, requested his help in securing a job. At that time, the applicant told him that there was no opportunity for employment but assured him that he would make him wealthy by appointing him as a director of his company. The applicant purchased a land in the informant's name and used certain documents obtained from him to appoint him as a director in his company, JD Chemicals and Fertilisers Private Limited. The informant was taken to the Bank of Maharashtra, Kopri Branch in Thane, where, in collusion with co-accused Snehal Bansode, who is the applicant's sister in law, and the co-accused Umeshkumar, the bank manager, the applicant secured a loan of Rs.2,75,00,000/- by mortgaging the land purchased in the informant's name. The co-accused Snehal managed the informant's bank transactions and issued cheques using forged signatures. In February 2022, the informant became aware of the applicant's financial troubles and requested to be removed as a director of the company. However, the applicant assured him that the loan payments would be handled, though he failed to pay the instalments and directed the bank to initiate legal action against the informant. Consequently, on 8 April 2022, the bank issued a notice to the informant, who then confronted the applicant and urged him to clear the loan.

4. It is alleged that the entire loan amount was misused by the applicant and his accomplices for personal benefits. As a result, the informant and Pranay filed a complaint at Phaltan Rural Police Station on 13 April 2022. The next day, the co-accused Snehal and Nitin Kare, took the informant in an Innova car under the pretext of resolving the loan issue with the applicant in Pune. Upon reaching Balewadi, Pune, at around 10:30 p.m., the informant encountered other accused individuals. During the discussions, the co-accused Jayshree, the wife of the applicant, and Snehal, sister-in-law of the applicant, began quarrelling with the informant and threatening him, questioning why he lodged a police complaint.

5. It is further alleged that the applicant pointed a revolver at the informant with the intent to kill him but was pacified by the co-accused. Under duress and threats to his life, the applicant took the informant to Thane on 15 April 2022, and forced him

to sign several documents. These included an application to withdraw the complaint against the applicant and a fabricated complaint against his political rival. On 16 April 2022, while returning to Satara, the group stopped near Joshi Vihar, where co-accused Adinath Mote joined them. The applicant instructed Adinath to take the informant to the office of the Superintendent of Police and submit the applications. Between 17 April 2022 and 19 April 2022, the applicant took the informant and another director, Pranay Matkar, to various locations, including Pune, Shirdi, and Shingnapur. Under gun point, the applicant threatened the informant on 20 April 2022, warning him not to file any complaints against him in the future. After this, the informant was allowed to return home. On 21 April 2022, the applicant from Phaltan forcibly took the informant in his Fortuner car to his office. There, co-accused Adinath, along with two unidentified individuals demanded Rs.10,00,000/- from the informant. When he refused, they assaulted him and took Rs.30,000/- from his trouser pocket. On 7 November 2022, the informant met co-accused, Anil Sarak at Vadjal, where Sarak demanded money from him. Around 9:45 p.m. that day, co-accused Sagar Gaikwad, sent to two unidentified individuals to the informant, instructing him to handover any money he had. When the informant stated that he had no money, they forcibly took Rs.40,000/- in cash from him and compelled him to withdraw an additional Rs.10,000/- from an ATM. Following this, co-accused Sagar, called the informant, warning him to pay the remaining amount or face severe consequences.

6. On 13 December 2022, the informant received a message through an intermediary instructing him to meet co-accused Nitin Kare and Anil Sarak at Surwadi. When he complied, they demanded the remaining amount. Upon his refusal, they threatened to shoot him and forcibly took him to an ATM, where they compelled him to withdraw Rs.20,000/-. The co-accused, Anil Sarak, then forcibly snatched the cash, along with the informant's mobile phone and watch. Following these events, the informant lodged the present complaint at Phaltan Rural Police Station, leading to the registration of the present crime.

7. Mr SB Talekar, the learned Counsel appearing on behalf of the applicant, submits that the applicant has been falsely implicated in the present crime due to political rivalry. Emphasising the applicant's innocence, the learned Counsel points out a delay in lodging the FIR. According to him, the delay undermines the credibility of the allegations. The accusations made in the FIR are vague and bereft of details,

rendering them baseless. The learned Counsel highlights that the applicant has already surrendered the alleged licensed firearm to the relevant authority, demonstrating his innocence and willingness to cooperate with the investigation. There is no direct or live connection linking the applicant to the alleged crime; therefore, the MCOC Act's stringent provisions are inapplicable. The learned Counsel also contends that the sanction granted under the MCOC Act was issued hurriedly and without proper application of mind, raising serious procedural questions.

8. According to Mr Talekar, the term "communication or association" under Section 2(1)(a)(i) of the MCOC Act should be interpreted to mean such communication or association that aids or assists in the facilitation of organised crime. Any communication or association that lacks a connection to the facilitation of organised crime would fall outside its scope. The phrase "any unlawful means" must refer to acts that have a direct nexus to the commission of the crime that the MCOC Act seeks to prevent or control. However, in this case, the essential elements of Section 2(1)(a)(i) of the MCOC Act are not at all applicable. The learned Counsel further contends that, in most cases where the charge sheets have been filed, the disputes were civil in nature. Additionally, no *prima facie*

material is on record to demonstrate the existence of an organised crime syndicate or that such a syndicate has committed any organised crime. According to the learned Counsel, the directors of JD Chemicals and Fertilisers Private Limited, Pranay Matkar and the informant are unreliable witnesses. The WhatsApp messages exchanged between the applicant and the informant reveal that the complaint was falsely lodged under the influence and pressure of a political rival. Furthermore, the applicant has already surrendered his revolver to the police, making the claim of a threat to witnesses baseless.

9. Mr Talekar, the learned Counsel, further highlights the applicant's prolonged detention, stating that he has been incarcerated since 21 December 2022. The prolonged imprisonment is detrimental, especially since the applicant intends to contest the upcoming Maharashtra General Assembly Elections scheduled for 20 November 2024. To facilitate his participation in the democratic process, the applicant seeks bail and assures the Court of his willingness to comply with any conditions it may impose.

10. Relying on the decision in ***Ranjitsingh Brahmjeetsingh Sharma v. State of Maharashtra & Anr.***[1], the learned Counsel

[1] (2005) 5 SCC 294.

submits that the Act is deterrent in nature. It provides for deterrent punishment. It envisages three to ten years of imprisonment and may extend to life imprisonment. Death penalty can also be imposed if somebody commits a murder. Similarly, fines ranging between three to ten lakhs can be imposed. The provisions of the said Act, therefore, must receive a strict construction so as to pass a test of reasonableness. Similarly, in the case of ***State of Maharashtra v. Gopal Sadhusharan Pandey & Ors.*** [2] the Division Bench of this Court held that to bring activities prohibited by the law for the time being in force, within the purview of organised crime such activities which are termed as "continuing unlawful activity" have to be indulge in or performed with the objective of gaining pecuniary benefit or gaining undue economic or other advantage for him or any other person. Furthermore, as has been held by the Hon'ble Supreme Court in ***Dattatraya Krishnaji Ghule v. State of Maharashtra & Anr.***[3] that there needs to be a reasonable ground to believe that the appellants are not guilty of the offences they have been charged with and that they are not likely to commit an offence under MCOC Act while on bail. The learned Counsel further submits that in the present case the sanctioning authority did not apply its mind while granting sanction ***(State of Maharashtra v. Mohd. Yunus***

[2] 2017 SCC OnLine Bom 9667.

[3] (2007) 4 SCC 113.

& Ors.)[4]. The learned Counsel further submits that apart from the merits of the case, the accused is languishing in jail since 21 December 2022 and hence, case for grant of bail is made out. In support of his contentions, the learned Counsel relied on the following decisions : ***(i) Indrani Pratim Mukerjea v. Central Bureau of Investigation & Anr.***[5]***, (ii) Ajit Bhagwan Tiwde v. State of Maharashtra***[6]***, (iii) Naeem Ahmed alias Naim Ahmad v. Government of NCT of Delhi***[7]***, (iv) Sheikh Javed Iqbal alias Ashfaq Ansari alias Javed Ansari v. State of U.P.*** [8]***, (v) Suryaji Pandurang Jadhav v. Directorate of Enforcement, Worli & Anr.***[9]***,(vi) Kalvakuntala Kavitha v. Directorate of Enforcement***[10]***, (vii) Manish Sisodia v. Directorate of Enforcement***[11]***.***

11. Mr Harshad Nimbalkar, the learned Special Public Prosecutor representing the respondent/State, opposing the request for bail, contends that the material on record, including witness statements, implicates the applicant and his associates in serious criminal activities. According to the learned SPP, the applicant, along with his associates, coerced the informant and his friend to sign various documents under duress, kidnapped

4 2016 SCC OnLine Bom 11201.
5 (2022) 18 SCC 182.
6 2022 SCC OnLine Bom 4079.
7 2024 SCC OnLine SC 220.
8 (2024) 8 SCC 293.
9 2024 SCC OnLine Bom 3014.
10 2024 SCC OnLine SC 2269.
11 2024 SCC OnLine SC 1920.

the informant on multiple occasions, and issued threats while branding a revolver. The learned SPP further contends that the informant was appointed as a director of JD Chemicals and Fertilisers Private Limited at the applicant's behest. Subsequently, for personal financial gain, the applicant facilitated the purchase of land in the informant's name to procure a loan of Rs.2,00,00,000/- from the Bank of Maharashtra. The disbursed funds were then misappropriated by the applicant and his associates, co-accused Snehal and Umesh, through forgery of the informant's and his friend's signatures on loan documents. These funds were funnelled into various entities controlled by the applicant and his associates. The learned SPP submits that this scheme is a part of a more significant *modus operandi* adopted by the applicant to defraud multiple individuals.

12. Mr Nimbalkar highlights the applicant's extensive criminal antecedents, revealing that more than 18 similar crimes have been registered against him, with charge sheets filed in some instances. He further submits that the present case falls squarely within the purview of the MCOC Act, given the organised nature of the criminal activities.

13. According to the learned SPP, the power to grant bail is

not only subject to the limitations imposed by Section 439 of the Code of Criminal Procedure, 1973 but also to the restrictions outlined in Section 21(4) of the MCOC Act. The learned SPP asserts that there is sufficient material on record to establish that the applicant is the leader of an organised crime syndicate. Witness Pranay Matkar specifically stated that the applicant, Digambar, coerced him into signing various documents to open an account with the Bank of Maharashtra, which was subsequently managed by co-accused Snehal Bansode. The statement of another witness, Pramod Jadhav, shows that he drove to Pune on the applicant's instructions. The statements of Pranay Matkar and Pratap Shinde further reveal that the applicant, Digambar, brandished a revolver at the informant in their presence.

14. The learned SPP contends that this case extends beyond abduction, extortion, and attempted murder. The applicant's *modus operandi* involves exploiting poor and needy individuals to form companies in their names and secure bank loans fraudulently. Witnesses Prithviraj and Shambhuraje Nimbalkar stated that land was purchased in the name of JD Chemicals and Fertilisers Private Limited through the informant at the applicant's direction, and he managed all dealings. Additionally, witness Dattatray, the applicant's cousin and a guarantor for the

loan availed by JD Chemicals and Fertilisers Private Limited, stated that the applicant took him to the Bank of Maharashtra, Kopri branch, Thane, to facilitate the loan. He further alleged that the co-accused, Snehal Bansode, sister-in-law of the applicant, forged Pranay Matkar's signature, while co-accused Umeshkumar forged the informant's signature on the loan documents in his presence.

15. Referring to CR No.582 of 2022 lodged by Vikram Sawant, the learned SPP submits that Vikram Sawant came into contact with the applicant in 2019 and was defrauded when the applicant formed a company and took loans in his name and that of his wife. The applicant and his associates have criminal antecedents of 18 criminal cases, most of which involve allegations of violence, extortion, misappropriation of public funds, and defrauding investors. The learned SPP submits that the Court must assess whether there is "reasonable ground" to believe the accused is not guilty and record such satisfaction in its order. The requirement of one or more charge sheets pertains to the unlawful activities of the organised crime syndicate as a whole, not to individual members. The learned SPP also draws the Court's attention to the list of entities owned by the applicant and his relatives, illustrating the applicant's *modus operandi* in committing these offence.

Although six criminal cases were referred to the sanctioning authority, it considered only four criminal cases while granting the sanction. This itself shows the application of mind by the authority concerned. Furthermore, the material on record shows that the funds were transferred from JD Chemicals and Fertilisers Private Limited to Aayur All in One Shopee Private Limited, where the applicant and co-accused Snehal are directors. The land purchased by JD Chemicals and Fertilisers Private Limited, valued at Rs.33,00,000/- as per the ready reckoner, was purchased for Rs.17,00,000/- but falsely inflated to Rs.2,39,72,225/- in the valuation report submitted for securing a loan. A criminal case has already been registered against the branch manager who sanctioned this loan. Using a similar *modus operandi*, the applicant secured loans amounting to Rs.26,06,14,000/- for his other companies, which subsequently became Non-Performing Assets.

16. The learned SPP argues that it is not necessary for the same set of individuals to commit every offence linked to the organised crime syndicate. The participants may include new accused or a combination of old and new individuals. What matters is that all these offences are connected to the syndicate. Since more than one charge sheet has been filed alleging cognizable offences punishable with imprisonment of three

years or more, and these charge sheets contain allegations of unlawful activities by the applicant and his associates as part of an organised crime syndicate, with cognisance taken by the competent Court, the legal requirements to establish "continuing unlawful activities" are fulfilled. In support of his contentions, the learned SPP, relied upon the following authorities. ***(i) Abhishek v. State of Maharashtra & Ors.***[12] ***, (ii) State of Maharashtra v. Jagan Gagansingh Nepal & Anr.***[13]***, (iii) State of Maharashtra v. Pankaj Jagshi Gangar***[14] ***(iv) Govind Sakharam Ubhe v. State of Maharashtra (at the instance of DCB, CID, Unit-IV, Mumbai)***[15] ***and State of Maharashtra v. Vishwanath Maranna Shetty***[16]***.***

17. Additionally, relying on the decision in ***Vishwanath Pratap Singh Vs Election Commission of India***[17], Mr Nimbalkar asserts that the right to contest an election is not a fundamental or a common law right but rather a statutory privilege. He contends that the applicant's intention to contest elections does not outweigh the necessity of his continued detention, especially given the severity of the allegations. Concluding his submissions, the learned SPP highlights that the applicant is

12 AIR OnLine 2022 SC 758.
13 2011 (5) AIR Bom. R 574.
14 AIR OnLine 2021 SC 1126.
15 2009 SCC OnLine Bom 770.
16 (2012) 10 SCC 561.
17 SLP (Civil) No.13013 of 2022 dated 9 September 2022.

contesting elections from the Phaltan constituency, where the present FIR has been lodged. Given the applicant's significant influence in the locality, his release on bail poses a substantial risk of evidence tampering and witness intimidation. Therefore, the learned SPP strongly urges the Court to deny the applicant's bail request in the interest of justice and public safety.

18. This Court has given anxious consideration to the rival contentions canvassed across the Bar and perused the material placed on record.

19. It is a settled position in law that bail in financial offences is not granted automatically. It is contingent upon several factors, such as the nature of the offences, the relevant legal provisions and the behaviour of the accused. The Courts are required to examine each case to ensure that justice is served and to prevent potential abuse of the liberty granted through bail. In ***Vishwanath Maranna Shetty (supra)*** it is held that:

> *"29. While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this 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 organised 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. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart

> *from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA."*

20. In the present case, the applicant faces accusations of multiple offences, including defrauding the informant by obtaining a loan under false pretences and failing to repay it. Further allegations are that the applicant engaged in criminal activities such as kidnapping and issuing threats to the informant's life to extort money. The material on record, particularly the witness statements, *prima facie* indicates the applicant's direct involvement in the crime. It is alleged that the applicant appointed the informant and his associates as directors of JD Chemicals and Fertilisers Private Limited to

facilitate obtaining a loan from the Bank of Maharashtra. This loan was secured by mortgaging a piece of land purchased in the informant's name at the applicant's directive. The disbursed funds were subsequently diverted to the applicant's entities. The initial review of the bank statements suggests that the applicant subsequently benefited from these transactions. The material on record further indicates that the applicant reneged on the arrangement when it came time to repay the loan. Moreover, it is alleged that he escalated matters by threatening the informant, including discharging a firearm to intimidate him. These actions suggest a deliberate and calculated effort to exploit and endanger the informant. Between April 2022 and December 2022, the applicant and his associates are accused of repeatedly threatening the informant, using coercion and intimidation to extort money. Initially, in 2021, the informant raised concerns about the applicant's conduct. However, the applicant allegedly forced the informant into withdrawing his complaint and, instead, filed a false complaint against a political rival.

21. The applicant has raised objections about alleged defects in the sanction order. The applicant's objection to the sanction order is based solely on the lack of consideration of the opinion sought from the Public Prosecutor. It is undisputed that the

opinion was initially sought from the Public Prosecutor; however, the sanction was granted without waiting for it. It appears that upon realising that seeking the opinion was unnecessary and unwarranted, the sanctioning authority corrected itself, considered the material before it, and granted the sanction. In such a situation, the validity of the approval or sanction cannot be determined without giving the prosecution an opportunity to present evidence. A definitive decision on this issue can only be made after the trial is complete.

22. After being granted pre-arrest bail in a separate case, the applicant allegedly resumed issuing threats to deter the informant from pursuing legal action. According to the FIR, the applicant's associates issued another threat on 13 December 2022, the same day the FIR was officially filed. In this backdrop, the Court finds the argument about a delay in filing the FIR unconvincing. *Prima facie,* the records indicate the applicant's active involvement in the present crime. The applicant's criminal antecedents further underscores the seriousness of the matter, with over 18 criminal cases against him and charge sheets filed in several instances. These cases include similar offences, thus invoking the provisions of the MCOC Act. Additionally, it is undisputed that the applicant is a political figure contesting the Maharashtra General Assembly

Elections from the Phaltan Constituency. Given the locality's connection to the present case, there is a credible risk of the applicant's tampering with the evidence and exerting influence over witnesses. Moreover, the Call Records (page 185) indicates that the applicant approached the informant with a revolver. The charge sheet corroborates the allegations against the applicant at every point. There is sufficient material on record to show the applicant's involvement in the present case. While personal liberty is significant, even for those accused of crimes, it is equally crucial for Courts to assess the potential risks if such individuals are granted bail. The liberty of the accused must be balanced against the fundamental rights and safety of victims and witnesses, whose lives and freedoms could be endangered by the accused's release. Ensuring justice requires a nuanced approach that considers not only the rights of the accused but also the broader implications for public safety and integrity of the judicial process.

23. In light of the gravity of the offence and the applicant's antecedents, this Court is not inclined to grant bail. Accordingly, the application stands rejected and disposed of.

[R.N. Laddha, J.]