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

CRIMINAL APPLICATION (ABA) NO.10 OF 2024
(Iman s/o Abdul Rahim Khan Vs. State of Maharashtra)

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

----

Mr. G.S. Gour, Advocate for the applicant.
Ms S. Thakur, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 3, 2024.

Heard.

2. By this application, the applicant is seeking anticipatory bail in connection with Crime No.706/2023 registered with police station Sadar, Nagpur for offence punishable under Sections 419, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by Mrs. Nisha Rajkumar Jaju on an allegation that she is the owner of Plot No.89/90 situated at Mouza Nara, Mudat No.4, Khasra No.139 Patwari Halka No.11 admeasuring 3000 square feet. It is further alleged that the present applicant and other co-accused persons have made false and forged documents pertaining to the said plot of land and sold the said plot of the present applicant. She further alleged that for selling the said plot, the accused persons impersonated a fake lady as informant

who stood as Nisha Jaju and executed a sale-deed in favour of the present applicant. It is further alleged that the co-accused have also fabricated the documents and opened a bank account in the Maharashtra Co-operative Bank Ltd. in the name of the informant and accused persons deposited a cheque of Rs.35,00,000/- in the said account and said amount was transferred in the account of Atharva Bhagwant, Kushal Sanjay Hiwanj and Bhupesh Shinde by RTGS. Thus, the allegation is that the complainant was cheated by way of impersonation. On the basis of said report, the crime is registered against the present applicant.

4. Learned Counsel for the applicant submitted that as far as the role of the present applicant is concerned which is to the extent of purchasing the said land. The fabrication of the document is not by the present applicant. Merely because the applicant has purchased the said land, this false FIR is lodged against him. He further submitted that as far as the investigation is concerned, the document is a registered document and for recovery of the document, the custody of the present applicant is not required. He further submitted that though prosecution has by obtaining the approval and sanction applied the provisions of MCOC Act, but the ingredients of Section 3 are not fulfilled, and therefore, the provisions of MCOC Act are not applicable. He further submitted that considering the role of the present applicant, as no *prima facie* case is made out against the present applicant and

therefore, anticipatory bail is maintainable. In support of his contention, he placed reliance on ***Shabhana Parveen Inayatullah Shaikh Vs. State of Maharashtra in CR No. 332 of 2020]*** wherein the Division Bench of this Court considered the provisions of the MCOC Act and observed that there is no hard-and-fast rule that the first information report must always contain the names of all persons who were involved in a commission of an offence. Very often the names of the culprits are not even mentioned in the FIR and they surface only at the stage of the investigation. The scheme under Section 23 of MCOCA is similar and Section 23(1)(a) provides a safeguard that no investigation into an offence under MCOCA should be commenced without the approval of the authorities concerned. Once such approval is obtained, an investigation is commenced. Those who are subsequently found to be involved in the commission of the organised crime can very well be proceeded against once sanction is obtained against them under Section 23(2) of MCOC Act. It is further held that in the case at hand, the name of the petitioner finds mentioned in the approval order as a member of the organized crime syndicate. Nor the invocation of MCOC Act against the petitioner is assailed on the count that her name does not mention in the subject FIR. In our view, the prosecution faces an insuperable impediment in the nature of absence of material which establishes the nexus between the petitioner and the organized crime syndicate, *prima facie*.

In the facts of the instant case, if we take any other view then it would be in teeth of the caution administered by the Supreme Court in the case of ***State Of Maharashtra & ors. Vs Lalit Somdatta Nagpal & anr. Special Leave Petition (crl.) 3320-21 of 2005*** and the cherished personal liberty of the petitioner would be the casualty. Learned Counsel submitted in the present case also the ingredients of Section 3 are not fulfilled. Besides this offence, only one offence is registered against the present applicant. Thus, on the date of invocation of the provisions of the MCOC Act, two charge-sheets were not filed against the present applicant, and therefore, the provisions of the MCOC Act are not applicable. He submitted that there is no material collected by the investigating agency to show that the alleged offence is committed by the present applicant for economical gain or pecuniary gain. In the light of the above facts and circumstances, the application deserves to be allowed.

5. Learned Additional Public Prosecutor strongly opposed the application and submitted that in one of the crime the charge-sheet is already filed against the present applicant. Present applicant is a member of organised crime syndicate and in furtherance of the common object of the said organised crime syndicate he has committed the offence for pecuniary gain. In the connected matter i.e. Criminal Application (ABA) No.261/2024 of the present applicant is rejected. In the light of the above facts, the present application deserves to be rejected.

6. Having heard the learned Counsel for the applicant and learned Additional Public Prosecutor for the State. Perused the investigation papers. As far as the present applicant is concerned who allegedly is the purchaser. It is alleged that he has purchased the said plot after obtaining the loan from the bank. The allegations made in the FIR is that the forged documents are prepared by the co-accused and one woman by name Nisha Jaju was presented before the Registrar to execute the sale-deed. As far as the allegation of the forgery of the document is concerned which is not against the present applicant. Present applicant is the purchaser of the said land.

7. Whether the provisions of MCOC Act are applicable or not and what is the requirement to apply the provisions of the MCOC Act, it is necessary to consider the expression 'continuing unlawful activity'. In view of Section 2(1)(d) of the MCOC Act, activities prohibited by law for the time being in force 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. The stress is on the unlawful activities committed by the organized crime syndicate. Section 2(1)(f) of the MCOC Act defines 'Organized Crime Syndicate' means a group of two or more persons who, acting singly or collectively, as a syndicate or a gang indulged in activities of organized crime.

8. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized syndicate indulge in organized crime. That 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 purpose. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law. The definition of continuing unlawful activity is defined in Section 2(1)(d) which means that an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

9. 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.

10. Thus, Section 2(1)(d) of the MCOC Act defines ‘continuing unlawful activity’ set down a period of ten years within which more than one charge-sheets 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 MCOC Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOC Act.

11. In the light of the above provisions of the MCOC Act if the facts of the present case are considered it reveals that one crime is registered against him in the individual capacity. As far as the association of the present applicant in the organised crime syndicate is concerned there is no material collected during the investigation to show that in furtherance of the common object of that syndicate, the applicant has either committed an offence for pecuniary gain or for pecuniary benefit. Thus, there is no material on record to show that the applicant has committed any offence in furtherance of the common object of the said syndicate. Thus, considering that at this stage, there is no material to show that the applicant is having any association with the members of the organised crime syndicate, the rigor under Section 21(4) of the

MCOC Act would not apply. Learned Counsel for the applicant has rightly relied upon *Shabhana Parveen Inayatullah Shaikh Vs. State of Maharashtra* *(supra)* wherein while considering the anticipatory bail application of the applicant therein it is observed that the prosecution faces an insuperable impediment in the nature of absence of material which establishes the nexus between the petitioner and the organized crime syndicate. Here the similar situation arises as there is no material to show that there is nexus between the present applicant and the members of the organised crime syndicate. Therefore, *prima facie* satisfaction that the invocation of the provisions under MCOC Act appears to be doubtful, therefore, the rigor under Section 21(3) of the MCOC Act may not come into play and the applicant would be entitled for grant of the pre-arrest bail.

12. In view of the above observation of the Division Bench which is fairly applicable to the present case, the application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass the following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Iman s/o Abdul Rahim Khan in connection with Crime No.706/2023 registered with police station Sadar, Nagpur for offence punishable under Sections 419, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(iv) The applicant shall furnish his cell phone number and address with the address proof along with the names of his two relatives and their address proof, before the Investigating Officer.

(v) The applicant shall not leave the jurisdiction of Nagpur district without prior permission of the District Court, Nagpur.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*