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

CRIMINAL APPLICATION (BA) NO.219/2024
Ashish s/o Loknarayan Pande
..vs..
State of Mah., thr.PSO Koradi PS, District Nagpur

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

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Shri R.K.Tiwari, Counsel for the Applicant.
Shri Nitin Autkar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 16/04/2024
PRONOUNCED ON : 18/04/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant, arrested on 4.8.2023, seeks regular bail in connection with Crime No.285/2023 registered with the non-applicant/police station for offences punishable under Sections 143, 147, 148, 149, 307, 452, 386, 427, 294, and 506 -II of the Indian Penal Code and 3/25 of the Arms Act and 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act).

2. The crime is registered on the basis of a report lodged by one Mirza Zahid Baig Bismillah Baig on 3.8.2023. As per his report, on 26.7.2023, at about 8:00 pm, he and his friends were

celebrating birthday party of one of his friends at the house of Sanjay Chawre, situated at Bokhara, near Ramnath City. After dinner, rain started and, therefore, they were not in a position to leave the place and, therefore, they started playing cards i.e. "Rummy." At about 11:00 pm, they saw some people approaching towards the house with torches in their hands. As he and his friends apprehended that police are approaching them, they took a shelter at some distance from the house. Those people entered into the house and started sabotaging in the house and were also abusing and breaking panel of doors and windows. The complainant and his friend Javed Shaikh came near the house and saw that one Mohsin Shaikh @ Baba Tiger was holding a pistol in his hands and his associates were also holding weapons like pistols, knives, sticks, and iron rods in their hands. The applicant was also present with said Mohsin Shaikh @ Baba Tiger. On being enquired with said Mohsin Shaikh @ Baba Tiger, he informed that as the complainant and his friends had given tips to the police, he has to hide himself and also he spent lot of money and, therefore, the complainant should give him Rs.50,000/-. On expressing inability to pay the amount, the complainant was manhandled by those people and also threatened him. The complainant and his friend Javed Shaikh escaping started running. At the relevant time, said Mohsin Shaikh @ Baba Tiger fired a bullet at the complainant, however the same bullet missed and, therefore, he has not received any injuries. There was an attempt to kill the complainant and, therefore, he lodged the report with the police station. On the basis of the said report, the police registered the crime against the applicant.

3. Heard learned counsel Shri R.K.Tiwari for the applicant and learned Additional Public Prosecutor Shri Nitin Autkar for the State.

4. Learned counsel for the applicant submitted that provisions of the MCOC Act are not applicable against the applicant as there is no material to show that the applicant is member of organized crime syndicate and he has committed any offences in furtherance of common object of the said syndicate. He further submitted that though the investigating agency relied upon crime chart, all crimes registered against the applicant are in individual capacity and not as a member of organized crime syndicate. He further submitted that no offence is registered against the applicant along with other members as a member of organized crime syndicate. Insofar as offences, against the applicant, under the Indian Penal Code are concerned, except

presence, no overt act is attributed to the applicant.

5. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

> **1. Criminal Application (BA) No.641/2021 (Ashishkumar s/o Arunkumar Pande and another vs. State of Maharashtra, through PSO PS Ramnagar, District Gondia) decided by this court on 18.11.20121;**
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> **2. Criminal Application (BA) No.255/2023 (Mukesh s/o Bhaudas Karade vs. State of Maharashtra) with Criminal Application (BA) No.683/2023 (Nikesh @ Nikku Chagan Meshram vs. State of Maharashtra) decided by this court on 16.1.2024, and**
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> **3. Mohamad Iliyas Mohamad Bilal Kapadiya vs. The State of Maharashtra, reported in 2022 LiveLaw (SC) 538.**

Learned counsel for the applicant, on the basis decisions *supra*, prays for releasing the applicant on bail.

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that the applicant along with other co-accused unlawfully assembled in furtherance of common intention to commit the offence with weapons like pistols, knives, wooden rods, and they used those deadly weapons for causing terror in the vicinity. The name of the applicant is figured in the First Information Report as well as in

statements of various witnesses. The crime chart shows involvement of the applicant in six offences committed for economical gain. In view of Section 21(4) of the MCOC Act, there is a rigor and, therefore, the application deserves to be rejected. He further submitted that as far as contentions of learned counsel for the applicant are concerned, that no offence is registered against the applicant along with other members of organized crime syndicate, the same is not requirement of law and, therefore, the application deserves to be rejected.

7. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

1. Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009 ALL MR (Cri) 1903, and

2. Kavitha Lankesh vs. State of Karnataka and ors, reported in (2022)12 SCC 753.

8. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused entire investigation papers of the crime in question, it reveals that after obtaining an approval under Section 23(1) of the MCOC Act, provisions of the MCOC Act are applied against the applicant and

other co-accused. Insofar as involvement of the applicant in the incident is concerned, not only in the First Information Report but also in statements of witnesses his name is figured. The incriminating articles weapons, used in the commission of the crime, are recovered from the co-accused. The Investigating Officer has also placed on record the crime chart, which shows that in all six offences are registered against the applicant. Some of offences are in the nature of kidnapping, extortion, and robbery. Thus, the crime chart shows involvement of the applicant in the said offences is for economical gain.

9. Before going into the controversy involved in the present application, it is necessary to see certain provisions of the MCOC Act and its preamble. The preamble states that it is an Act to make special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, and for matters connected therewith and incidental thereto. The MCOC Act, states the preamble, makes special provisions for prevention and control of, for coping with, criminal activity by organized crime syndicate or gang. Essentially, therefore, the MCOC Act targets the unlawful activities of the organized crime syndicate. The objects and statements of the MCOC Act show that

organized crime has for quite some years come up as a very serious threat to the society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

10. The legislatures felt that The existing legal framework i. e. the penal and procedural laws and the adjudicatory system was found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime. It is the purpose of this Act to achieve there objects.

11. Section 2(1)(f) of the MCOC Act defines “organized crime syndicate’ to mean a group of two or more persons who, acting singly or collectively, as a syndicate or gang indulged in activities of organized crime.

12. Section 2(1)(e) of the MCOC Act defines “organised crime“ means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

13. The definition of continuing unlawful activity within meaning of Section 2(1)(d) states an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

14. 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. Therefore, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, 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 person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.

15. This Court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131;** in paragraph No.37, defined "continuing unlawful activity". This court observed that 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. This is evident from section 3(4) of the MCOC Act 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 lacks. It is further held that 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.

16. By giving hypothetical examples, it is held that what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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. Stress is on the unlawful activities committed by the organized

crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

17. Learned counsel for the applicant, placing reliance on the decision of the Honourable Apex Court in the case of **Prasad Shrikant Purohit vs. State of Maharashtra, reported in (2015)7 SCC 440,** submitted that as the applicant is not shown to be involved in any of criminal antecedents of the alleged organized crime syndicate, since there is incontrovertibly no nexus between the present offence and cases registered against members of organized crime syndicate, the applicant could not have been roped under the MCOC Act. However, in paragraph No.85 of the decision in the case of **Prasad Shrikant Purohit vs. State of Maharashtra** *supra,* the Honourable Apex Court observed, as under:

> "85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma shows that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may

not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organised crime in the manner set out in the said paragraph. In paras 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section 21(4)(b) of MCOCA."

18. Thus, observations of the Honourable Apex Court, by referring the judgment in the case of in **Ranjitsing Brahmajeetsing**

Sharma vs. State of Maharashtra and anr, reported in (2005)5 SCC 294, show that in order to invoke MCOCA even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature of such "organised crime", that by itself would attract the provisions of MCOCA.

19. In view of above observations, merely because the crime is not registered against the applicant along with other co-accused, that by itself is not sufficient to say that he is not related to organized crime syndicate. The nexus of the applicant with the co-accused, who are members of the organized crime syndicate, is sufficient to attract provisions of the MCOC Act.

20. As observed by this court in the case of **Govind**

Sakharam Ubhe vs. State of Maharashtra *supra*, having hypothetical examples, what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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 chargesheets have been filed. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

21. Thus, the material on record before this court *prima facie* shows association of the applicant along with the co-accused involving in the organized crime syndicate. Also, statements of witnesses, who are eyewitnesses, show involvement of the applicant in the alleged offence.

22. As held in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr** *supra*, the communication or the association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate. Thus, the

offence under Section 3(2) of MCOC Act must have a direct nexus with the offence committed by an organised crime syndicate.

In the present case, the said requirement at this stage is established by the prosecution.

23. As observed earlier, that the provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail because in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

24. Considering the material, particularly in the light of the bar under Section 21(4) of the MCOC Act, *prima facie,* the case is made out against the applicant.

25. As observed by the Honourable Apex Court in the case of **The State of Maharashtra vs. Vishwanath Maranna Shetty (Cr.Appeal No.1689/2012 decided by the Honourable Apex Court on 19.10.2012**, while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the 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 organized 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*. It is further observed by the the Honourable Apex Court that while dealing with application for grant of bail, in addition to broad

principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

26. Thus, satisfaction contemplated in clauses (a) and (b) of sub Section (4) of Section 21 of the MCOC Act, regarding accused being not guilty, has to be based on reasonable grounds. Though expression reasonable grounds has not been defined, it requires something more than a *prima facie* ground.

27. Considering the entire material on record, which shows involvement of the applicant in the alleged offence and his connection with the organized crime syndicate, for granting bail, the court has to come to conclusion that the applicant is not guilty of offence on the basis of reasonable grounds.

28. As observed, the expression “reasonable ground” has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that accused is not guilty of offence he is charged with. The reasonable belief on the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged crime. Thus, recording of satisfaction on these aspects is *sine qua non* for

grant of bail.

29. In view of the above well settled legal position, at this stage, there is a sufficient material on record to hold that the applicant is guilty of offences. At this stage, there is no material to conclude that involvement of the applicant is doubtful and he is not guilty of offences and, therefore, rigor under Section 21(4) of the MCOC Act comes into play.

30. In light of above circumstances, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!