



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

CRIMINAL APPLICATION (BA) NO. 255/2023

Mukesh s/o Bhaudas Karade V/s State of Maharashtra

WITH

CRIMINAL APPLICATION (BA) NO. 683/2023

Nikesh @ Nikku Chagan Meshram V/s 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. R.M. Daga, counsel with Mr. C.R.Thakur, counsel for applicant
(in B.A. No. 255/2023)
Mr. D.V. Chauhan, counsel for applicant (In B.A. No. 683/2023)
Mr. Nikhil Joshi, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/01/2024.

1. Heard Mr. R.M. Daga, learned counsel for the applicant in Criminal Application (BA) No. 255/2023, Mr. D.V. Chauhan, learned counsel for the applicant in Criminal Application (BA) No. 683/2023 and Mr. Nikhil Joshi, learned APP for the non-applicant/State.

2. By these applications, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with Crime No. 87/2022 registered under Sections 147, 148, 395, 307, 323 read with Section 149 of the Indian Penal Code, 1860, Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short 'MCOC Act').

3. Initially, the offence was registered under Sections 395, 307, 323, 147, 148 read with Section 149 of the Indian Penal Code, 1860. The investigating officer after obtaining sanction applied the provisions of the MCOC Act against the applicant and other co-accused.

4. The applicant in Criminal Application (BA) No. 255/2023 namely Mukesh s/o Bhaudas Karade is arrested on 10/08/2022 whereas the applicant in Criminal Application (BA) No.683/2023 namely – Nikesh @ Nikku Chagan Meshram is arrested on 2/08/2022 since then they are behind bar.

5. The crime is registered on the basis of report lodged by Manoj Nilkant Dunedar, on an allegation that on 28/05/2022 at about 6.30 p.m. he was returning towards his village Kurkheda, and on the way, he was in shortage of fuel in his motorcycle therefore, he was waiting for somebody to bring the fuel. At the relevant time, he heard the noise of quarrel between some persons near the Goshala, therefore, he went near the Goshala and witnessed the present applicant along with other co-accused were assaulting one person working in the Goshala. He further witnessed that the applicant Nikesh @ Nikku Chagan Meshram has pressed the neck on that person whereas another applicant Mukesh Bhaudas Karade has assaulted him by means of stone. It is further alleged that the present applicants have also committed robbery by snatching Rs. 11,000/- which were on the pocket of the informant, on the basis of said report, the police have registered the crime against the present applicants.

6. During the investigation, it revealed to the investigating officer that the applicants are the members of organized crime syndicate, and in furtherance of the common object of the said syndicate, they have committed the offence and therefore, by obtaining the prior approval the provisions of MCOC are made applicable.

7. Learned counsel Mr. R.M. Daga submitted that there is no single charge-sheet against the present applicant to show his involvement as a member of the organized crime syndicate. As far as the role of the present applicant – Mukesh Bhaudas Karade in the present crime is concerned, it is only to the extent that he has assaulted by means of stick. The injury certificate which is produced on record show that though the injured has sustained the grievous injury, but it was not life threatening. The another injured who intervene in the quarrel has sustained the injury which is simple in nature. Thus, no prima-facie case is made out against the applicant i.e. Mukesh Bhaudas Karade.

8. He further submitted that there is absolutely no material against the applicant – Mukesh Bhaudas Karade to establish that he was a member of the organized crime syndicate, and he has committed continuous illegal activities being a member of the organized crime syndicate. The ingredient to attract the offence punishable under the provision of the MCOC Act are not at all fulfilled and therefore, the provision of Section 21(4) of the MCOC Act is not attracted against him. He submitted that now investigation is completed, since last approximately two years he is behind bar, and further incarceration is not required.

9. Heard learned counsel Mr. D.V. Chauhan for the applicant – Nikesh @ Nikku Chagan Meshram, who submitted that though provisions of MCOC are made applicable against the present applicant and the prosecution has attempted to show against the present applicant and co-accused Parvej, one offence is registered vide Crime No. 439/2018. He placed on record the copy of order passed by this Court while releasing the present applicant on bail wherein this Court has observed that with regard to the applicability of offence punishable under the MCOC Act, the prosecution could not point out as to how the present applicant, either individually or jointly as a member of crime syndicate committed any offence for pecuniary gain. The criminal antecedents against the present applicants are mainly for the offence punishable under the Maharashtra Prohibition Act, 1949 (for short 'the Act of 1949) in his individual capacity.

10. He further submitted that in an approval order, the crime chart is attached which shows that the crimes alleged to be committed by the applicant is in the nature of individual capacity. The only one offence is registered against the present applicants along with other co-accused Parvej but the observation of this Court itself shows that there is no material before the Court attracted the provisions under the MCOC Act. He further submitted that, in the present crime also, during investigation several statements are recorded by the investigating officer but none of the statement points out that present applicant is continuously involved in continuing unlawful activity and to attract the provisions of MCOC Act, the

ingredients requires to be fulfilled. Thus, there is no material to show that more than one charge-sheet have been filed before the competent Court within the presiding period of ten years against the applicant and therefore, the provisions of MCOC Act are not applicable against the present applicant.

11. He further submitted that as far as the allegation in the present crime and the recitals of the FIR are concerned, it reveals that only role attributed to the present applicant that during the scuffle between the parties, the knife which was in the hand of the present applicant caused the injury to the informant. The injury sustained by the informant is not life threatening injury, the injured is already discharged from the hospital and therefore, further incarceration of the applicant is not required. In view of that, he prays for grant of bail to the applicant.

12. Per contra, learned APP for the State strongly opposed the application on the ground that there are criminal antecedents against the applicant – Nikesh @ Nikku Chagan Meshram as several offences are registered against him. The role attributed to the applicant - Nikesh @ Nikku Chagan Meshram is also vital role who has caused the injury by means of knife to the informant. He further submitted that there is a limitation under Section 21(4) of the MCOC Act and considering the limitations under Section 21(4) of the MCOC Act, the applicant is not entitled for bail. He further submitted that considering the rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected.

13. Having heard learned counsel for the applicants and learned APP for the State, perused the investigation papers. As far as the allegation in the present crime is concerned, the role attributed to the applicant- Mukesh Bhaudas Karade that he assaulted the injured by means of stick. The injury certificate is on record which shows that he has sustained the grievous injury but now he is discharged from the hospital and nothing is on record to show that it was a life threatening injury. The recitals of the FIR shows that the applicant - Nikesh @ Nikku Chagan Meshram has caused the injury by means of knife but the statement of the informant itself shows that during the scuffle that knife hit against the informant, and he sustained the injury near to his right eye. So, there is no allegation that the present applicant- Nikesh @ Nikku Chagan Meshram has caused any injury by giving blow to the injured or the informant.

14. As far as the allegation against the applicant - Mukesh Bhaudas Karade regarding the applicability of the provisions of MCOC Act are concerned, admittedly there is no material to show that any charge-sheet is filed against the present applicant along with other co-accused to show there association with the organized crime syndicate. As far as the applicant -Nikesh @ Nikku Chagan Meshram is concerned, in approval order in crime chart, it is mentioned that applicant is involved in a series of offences.

15. Learned APP vehemently submitted that one crime under Section 302 is registered against the applicant- Nikesh @ Nikku Chagan Meshram along with co-accused -Parvej, while releasing the applicant - Nikesh @ Nikku Chagan Meshram on

bail in the said crime bearing No. 439/2020 registered under Section 302 of the IPC, the observation of this Court is required to be taken into consideration. This Court has observed that with regard to the applicability of the offence punishable under the MCOC Act, at this stage, the prosecution could not point out as to how the present applicant, either individually or jointly as a member of the crime syndicate committed any offence for pecuniary gain. The criminal antecedents against the present applicants are mainly for the offence punishable under the Act of 1949 in his individual capacity.

16. Moreover, whether the provisions of MCOC Act are applicable or not to be ascertained on the basis of material collected by the investigating agency during the investigation. Before adverting towards the material collected during the investigation, it is necessary to consider the provisions of MCOC Act. 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. Thus, 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.

17. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized crime 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 person. 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 a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

18. 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 e) in respect of which more than one charge-sheet have been filed before a competent court.

19. 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.

20. For enabling the Court to exercise its discretion in favour of a person the accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an offence of organized crime. The satisfaction that the accused is not guilty is to be on the basis that there are reasonable grounds for believing that the accused is not guilty. The phrase “reasonable ground” is not similar to the sufficient grounds.

21. After scrutinizing the material on record on the background of the rigor under Section 21(4) of the MCOC Act, it is trite law that stringent provisions are there, and the discretion of the Court to grant bail unless material on record warrants recording of satisfaction of existence of reasonable grounds to believe that the accused may not be involved in the offence punishable under the MCOC Act and that accused is not likely to commit an offence under the MCOC Act, if released on bail. The applicant Nikesh @ Nikku Chagan Meshram undisputedly involved in series of the offence, but the observations of this Court in the Criminal Application (BA) No. 198/2020 in respect of Crime No.439/2018 itself shows that

there is no material to show that the applicant - Nikesh @ Nikku Chagan Meshram either individually or jointly is a member of a crime syndicate and committed any offence for pecuniary gain. On scrutiny of the material in the present case also, though the crimes which are registered against the applicant- Nikesh are in his individual capacity and there is not even an iota of material to suggest that the applicant Nikesh @ Nikku Chagan Meshram is linked with the offences registered in the past. In fact, nothing is on record to show that he was associated with the organized crime syndicate and he has committed the said crime being a member of the organized crime.

22. In the case of *Mohd. Ilayas Bilal Kapadiya V/s State of Gujarat reported in 2022 SCC Online SC 713*, wherein the Hon'ble Apex Court held that the two requirements have to be satisfied the first one is that an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such crime syndicates the second one is that in respect of such an activity more than one charge-sheet must have been filed in the preceding period of last ten years.

23. After considering this requirements, though there is an offence registered against the applicant - Nikesh @ Nikku Chagan Meshram along with co-accused Parvej but that fact itself is not sufficient to show that he is a member of an organized crime syndicate. During the investigation, though the investigating officer has recorded various statements of the witness which nowhere indicates that offence is committed by the applicant - Nikesh @ Nikku Chagan Meshram as a member of

organized crime syndicate. Thus, prosecution could not point out as to how the present applicant either individually or jointly as a member of crime syndicate committed any offence for pecuniary gain. The criminal antecedents against the present applicant are mainly showing that offences are committed by him in his individual capacity.

24. In so far as the submission of the learned APP as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma vs State of Maha. and another, reported in 2005 ALL MR (Cri) 1538 (SC)* held that restriction imposed by Section 21 (4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Honourable Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by

the relevant provisions and what is required is that the satisfaction that there are reasonable grounds for believing the accused to be not guilty. The phrase “reasonable grounds” should not be confused with the phrase “sufficient grounds”. It cannot be lost sight of the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Honourable Apex Court has observed in the case cited supra that it is not the court is required to come to positive finding that the applicant is not guilty of an organized crime before grant of bail.

25. In the light of the above principle, if the facts of the present case are considered, admittedly, there is no material to show that the applicant was a member of an organized crime syndicate and he had committed the offence as a member of organized crime syndicate. There are no two charge-sheets filed during the preceding ten years against the applicant as a member of organized crime syndicates. The chart shows that all the crimes registered against the applicants are in his individual capacity, there is no material to show that he has committed the said offences to gain pecuniary benefits or undue economic or other advantage for himself or any other person. Thus, there are certainly reasonable grounds for believing that the applicant is not guilty of any of the offences covering under the organized crime. In fact, applicability of the MCOC Act itself is doubtful.

Even, there is nothing on record to demonstrate nexus between the present offence and the earlier offences.

26. Thus, there is no material to show that the earlier offences registered against the applicant are committed by him as a member of organized crime syndicate.

27. For the reasons recorded above, the applications deserves to be allowed. Hence, I proceed to pass following order:

ORDER

- 1) The Criminal Application (BA) No. 255/2023 and Criminal Application (BA) No. 683/2023 are **allowed.**
- 2) The applicant in Criminal Application (BA) No. **255/2023** namely **Mukesh s/o Bhaudas Karade** and Criminal Application (BA) No. **683/2023 – Nikesh @ Nikku Chagan Meshram**, in connection with Crime No. 87/2022 registered under Sections 147, 148, 395, 307, 323 read with Section 149 of the Indian Penal Code, 1860, Section 135 of the Maharashtra Police Act and Sections 4 and 25 of the Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, the applicants be released on bail on executing PR.Bond in the sum of Rs.50,000/- each with one solvent surety of the like amount.

[Corrected as per
courts order dt.
22.01.2024]

- 3) The applicant -**Mukesh Bhaudas Karade** shall attend the Police Station Kurkheda, District Gadchiroli and applicant- **Nikesh @ Nikku Chagan Meshram** shall attend the Police Station Kurkheda District Gadchiroli on first day of every month, till culmination of the trial.
- 4) The applicants shall not leave the concerned jurisdiction of the District Court without prior permission of the concerned Court.
- 5) The applicants shall not induce, threat or promise any witnesses who are not acquainted with the facts of the case.
- 6) The applicants shall not indulge in a similar types of activities.
- 7) Contravention of any of conditions above leads to cancellation of the bail.

The criminal applications are **disposed of**.

[URMILA JOSHI-PHALKE, J.]