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

## CRIMINAL APPLICATION (BA) NO. 782 OF 2024

Arsh Sayyad s/o Ashique Sayyad **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 |
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Mr. S.S. Trivedi, counsel for applicant.
Ms. T.H. Udeshi, APP for non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**
**DATED : 26/09/2024.**

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, 307, 452, 386, 427, 294, and 506-II read with Section 149 of the Indian Penal Code; and 3/25 of the Arms Act,1959; 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 the 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. At about 11:00 pm, they saw some people approaching towards the house with

torches in their hands. As he and his friends apprehended and the police were 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 panels 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 hand, and his associates were also holding weapons like pistols, knives, sticks, and iron rods in their hands. The applicant was also present, along with 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 spent a lot of money and, therefore, demanded 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, when attempted to escape from the said place, at the relevant time, said co-accused Mohsin Shaikh @ Baba Tiger fired a bullet at the complainant, however, the same bullet missed and, therefore, he has not received any injury. But 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 for the State.

4. Learned counsel for the applicant submitted that the provisions of the MCOC Act are not applicable against the applicant as there is no material to show that the applicant is a member of an organized crime syndicate and he has committed any offence in furtherance of the common object of the said syndicate. He further submitted that though the investigating agency relied upon a crime chart, in all four crimes are registered against the applicant, out of which in 3 crimes he is released on bail, and all the crimes are registered against him in his individual capacity and not as a member of an organized crime syndicate. He further submitted that no offence is registered against the applicant along with other members as a member of an organized crime syndicate. As far as the present offence against the applicant is concerned, except his presence, no overt act is attributed to him. He further submitted that the FIR is lodged after ten days, and there is no plausible explanation for the delay in lodging the FIR. He also invited my attention towards the fact that the informant is also criminal and various crimes registered against them. Therefore, he is very well acquainted with the procedure of lodging the report and legal provisions. He submitted that considering in three offences out of four, the applicant is already acquitted, there is no material to show that he is a member of an organized crime syndicate, and he has committed any offences for pecuniary gain, no case is made out to attract the provisions of the MCOC Act and therefore,

the application deserves to be allowed by releasing the applicant on bail.

5. Per contra, the learned Additional Public Prosecutor for the State strongly opposed the application on the ground that not only the statement of the informant but the statement of the various witnesses who are the eye-witnesses clearly show the involvement of the present applicant with the alleged offence. The applicant, along with other co-accused, unlawfully assembled in furtherance of the common object of the said syndicate along with the weapons like pistols, knives, and 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 that involvement of the present applicant is in for offences committed by him. As far as his association with the other accused is concerned, the crime chart shows that in two offences, he is involved along with other members of the organized crime syndicate. She submitted that as far as the contention of the learned counsel for the applicant is concerned that no offences are registered against the present applicant along with other members of the organized crime syndicate is concerned, is not correct as in two offences his involvement is revealed along with the other member of the organized crime syndicate. Thus, considering the rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected.

6. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State. 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 the 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 shown. The incriminating articles weapons, used in the commission of the crime, are recovered from the co-accused. The pistol and other weapons are already recovered, and the pistol is already forward to the ballistics expert for opinion. The Investigating Officer has also placed on record the crime chart, which shows that in all four offences are registered against the applicant. Admittedly, he is acquitted from the three offences. The crime chart shows that his involvement with other members of the crime in two offences.

7. 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 an 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 syndicates or gangs. Especially, 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 money, money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effects on our economy. It was seen that the organized criminal syndicates made a common cause with terrorist gangs and fostered 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 an immediate need to curb their activities.

8. 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. Therefore, to enact a special law with stringent and deterrent provisions including in certain circumstances, the said Act is enacted. It is the purpose of this Act to achieve these objects.

9. 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.

10. 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.

11. 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 charge-sheets have been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of such offence.

12. Thus, for an activity to be a `continuing unlawful activity', 1) the activity must be prohibited by law; 2) it must be a cognizable offence punishable with imprisonment of three years or more; 3) it must be undertaken singly or jointly; 4) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate, and 5) 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.

13. 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.

14. In the case of ***Prasad Shrikant Purohit vs. State of Maharashtra, reported in (2015)7 SCC 440***, wherein also, this aspect is considered by the Hon'ble Apex Court. In the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr, reported in (2005)5 SCC 294*** wherein also, it is observed that in order to invoke MCOC Act 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 MCOC Act. 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 MCOC Act.

15. In view of above observations, merely because the crime is not registered against the applicant to show that he has received any pecuniary gain 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, and the registration of the crime along with members of the organized crime syndicate is sufficient to attract provisions of the MCOC Act.

16. The provisions of the MCOC Act and its application in the present case against the present applicant is not at all doubtful at this stage. As far as the grant of bail is concerned, there is a rigor under 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

17. 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 present applicant.

18. Considering the entire material on record, which shows involvement of the present 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 guilty of offence on the basis of reasonable grounds.

19. As observed, the expression “reasonable ground” has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that the 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 the accused is not guilty of the alleged crime. Thus, recording satisfaction on these aspects is sine qua non for grant of bail.

20. In view of the above well settled legal position, at this stage, there is sufficient material on record to hold that the applicant is guilty of offence. At this stage, there is no material to conclude that involvement of the applicant is doubtful therefore, in view of the rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected, and the same is **rejected.**

The application stands **disposed of.**

[**URMILA JOSHI-PHALKE, J.]**

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