2024:BHC-NAG:11934



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

## CRIMINAL APPLICATION (BA) NO. 933 OF 2024

Saurabh Nanasaheb Madke **Vs** State of Maharashtra

WITH

## CRIMINAL APPLICATION (BA) NO. 753 OF 2024

Aman Khan Shamiulla 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 |
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Mr. R.S. Nayak, counsel for applicant.
Mr. K.R. Lule, APP for non-applicant/State. (BA No. 933 of 2024)
Mr. M.N. Ali, counsel for applicant.
Mr. D.V. Chauhan, Public Prosecutor (Senior Counsel) with Mr. N.B. Jawade, APP for non-applicant/State. (BA No. 753 of 2024)

**CORAM : URMILA JOSHI-PHALKE, J.**
**DATED : 16/10/2024.**

1. The applications being moved under 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (Section 439 of the Code of Criminal Procedure) read with Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act), seeks regular bail in connection with Crime No. 725/2022 registered with the non-applicant/police station for offences punishable under Sections 143, 147, 148, 307, 120-B read with Section 149 of the Indian Penal Code, 1860; and Section 3, 25, 27 of the Arms Act; and Sections 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to ‘the MCOC Act’).

2. The applicant namely Saurabh Nanasaheb Madke in Criminal Application (BA) No. 933/2024 is arrested on 15/11/2022, whereas the applicant namely Aman Khan Shamiulla Khan in Criminal Application (BA) No. 753/2024 is arrested on 20/11/2022 and since then, they are behind the bars.

3. The crime is registered on the basis of a report lodged by one Akshay Vijay Ghate at Pusad City Police Station on 15/11/2022 alleging that, there was a previous dispute between his uncle namely Vishal Ghate and the co-accused Sachin Haral, at the time of Navratri. Prior to one month of the incident, Sachin along with the present applicant i.e. Aman and one Karan Mekwan, came at the house and threatened them. On 15/11/2022, the complainant had gone to meet his lawyer along with his uncle namely Vishal Ghate, Krushna More and Vishwanath Walse, and when they were returning on the way, Sachin Haral, Kirti Rawal, Rajesh Pawar, Bajrang Kale and Shakir Shaikh were following them. In front of one Tiwari Xerox shop, Kirti Rawal had taken aim at Vishal Ghate and shot the bullet. At that time, Sachin Haral was shouting to kill the injured. The complainant and others shouted that they are visiting the Police Station and proceeded towards the Police Station of Pusad City. When they stopped at Police Station, Pusad City, they saw that the bullet had made an injury on the right thigh of the Vishal Ghate. Upon such complaint being received, the instant crime was registered and the investigating machinery was set in motion. During the course of investigation, it transpired that the co-accused Sachin Haral is

running a gang and the present applicants are the members of the gang, and they are involved in the continuing unlawful activities, and therefore, the provisions of MCOC Act are applied.

4. During the investigation, the investigation regarding the previous crime was also collected. The statement of the witnesses are recorded, from which, the association of the present applicants with the leader of the organized crime syndicate was revealed and therefore, they are arraigned as an accused in the present crime. After obtaining the sanction, the charge-sheet was filed against the present applicants.

5. Learned counsel for the applicants submitted that provision of the MCOC are not at all applicable against the applicants, as there is no material to show that the applicants are the members of the organized crime syndicate and they have committed any offences in furtherance of common object of the said syndicate.

6. Learned counsel, Mr. M.N. Ali, further submitted that though the investigating agency relied upon the crime chart, all crimes are registered against the applicant - Aman are in individual capacity and not as a member of an organized crime. He further submitted that, no offence is registered against the applicant along with other members as a member of organized crime syndicate. In so far as the offences against the applicants under the Indian Penal Code are concerned, except the presence no overt-act is attributed to the present applicant, in a previous crimes also.

7. In support of his contention, he placed reliance on the decision of the ***Principal Seat at Bombay in Criminal Application (BA) No. 2241/2018 in the Giriesh Kumar Nayar Vs State of Maharashtra, decided on 17/02/2021***.

8. Learned counsel, Mr. R.S. Nayak for the applicant Saurabh Nanasaheb Madke in criminal application (BA) No. 933/2024, reiterated the said contention and submitted that not a single offence is registered against the present applicant, therefore, there is absolutely no material to show that he is having any association with the leader of the organized crime syndicate. He further submitted that, as far as the presence of the present applicant, during the incident is concerned, there is no material to show that he was associated with the other co-accused. He submitted that, involvement of the present applicant in unlawful activities is not revealed from the investigation papers, therefore the bar under Section 21(4) will not attract, and the application of the provisions of MCOC Act itself is doubtful.

9. Per contra, Mr. K.R. Lule, learned APP in Criminal Application No. 933/2024 and Mr. D.V. Chauhan learned Public Prosecutor (Senior Counsel) in Criminal Bail Application No. 753/2024 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, and the weapons like pistols, knives, are used by the present applicant in various activities. The name of the applicant i.e. Aman as well as Saurabh is figured in the

statement of the witnesses, as far as the applicant – Aman is concerned, his names are also figured in the first information report, as well as statement of the various witnesses, the crime chart shows the nexus between the present applicant and the other co-accused.

10. In view of Section 21(4) of the MCOC Act, there is a rigor and therefore, the application deserves to be rejected.

11. He further submitted that, as far as the contention of the 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 the requirement of law, and therefore, the application deserves to be rejected.

12. Having heard learned counsel for the applicant and learned APP for the State and perused the 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, the name of the applicant – Aman is figured in the First Information Report. Moreover, the statement of the various witnesses shows, his association with the leader of the gang i.e Sachin Haral. The statements of the witnesses shows that Sachin Haral as well as the applicant Aman both are involved in running the gambling business, and they are gaining the pecuniary gain, and that amount is used in committing the other crimes. The statement of the

independent witnesses also shows the involvement of the applicant – Aman with the co-accused Suraj in visiting the various shop owners and threatening them, as well as obtained the pecuniary gain from them. Thus, the involvement of the present applicant - Aman and his association with the accused Sachin Haral, reveals from the various statement of the witnesses. As far as the other applicant – Saurabh is concerned, his association is also revealed from the statements of the witnesses, which shows that on the day of incident that when the injured Vishal was attacked. The applicant Saurabh was also present along with other co-accused, and when the injured and the informant approached to the police station, they fled away from the spot of incident. Thus, the crime chart shows that the offences are registered against the co-accused – Aman. Though offence is not registered against the applicant – Saurabh, but his association with other co-accused and with the leader of the organized crime syndicates reveals from the statements of the witnesses.

13. 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 shows 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 contraband, 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 the economy. It was seen that the organized criminal syndicates make 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.

14. 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 these objects.

15. 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.

16. 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.

17. 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.

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, 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 member 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.

19. The Division Bench of 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.2 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 is not established, that person cannot be roped in.

19. 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.

21. 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***, wherein also, in paragraph No.85 it is observed, as under:

> *"85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma shows 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.*

> *The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOC Act 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 MCOC Act against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding*
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> *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 MCOC Act."*

22. 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 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.

23. In view of above observations, merely because the crime is not registered against one of the applicant along with other co-accused, or 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.

24. 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.

25. Thus, the material on record before this court prima facie shows association of the applicant with the other members of the organized crime syndicate, the statements of witnesses, who are eyewitnesses, as well as the statements of the independent witnesses, shows the involvement of the applicant in the continuing unlawful activities.

26. 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.

27. 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 the 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.

28. 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.

29. Thus, satisfaction contemplated in clauses (a) and (b) of sub Section (4) of Section 21 (1) 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.

30. 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.

31. 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.

32. In view of the above well settled legal position, at this stage, there is a sufficient material on record to show the involvement of the applicants in the alleged offence. At this stage, there is no material to conclude that involvement of the

applicants is doubtful and he is not guilty of offences and, therefore, rigor under Section 21(4) attracts and come into play, and the applications deserves to be rejected.

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

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