



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

**CRIMINAL APPLICATION (BA) NO.802 OF 2024**

Gokul Devanand Birla

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,  
Umarkhed, District Yavatmal

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

Court's or Judge's orders

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Mr. M. N. Ali, Counsel for the applicant.

Mr. U. R. Phasate, APP for non-applicant /State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 12/09/2024**

1. By this application, the applicant is seeking regular bail in connection with Crime No.57/2021 registered with Police Station, Umarkhed, District Yavatmal for the offences punishable under Sections 307, 397, 395, 353 and 332 of the Indian Penal Code and Sections 3(1)(iii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "MCOC Act") for the sake of brevity.

2. The accusation against the present applicant is on the basis of report lodged by one Gajanan Vitthalrao Suroshe, who claims to be serving as Talathi in the Office of Tahsildar, Umarkhed. He lodged report on 24.01.2021 alleging that on 23.01.2021 at about 10.00 p.m. he has received the information that some persons are illegally

excavating sand from Vidul Khand-1 Canal, therefore the Naib-Tahsildar, Vaibhav Pawar proceeded towards the spot near Gawande College at about 11.20 p.m. witnessed one tipper was proceedings towards the spot, at the relevant time the person who was in the said tipper called somebody and thereafter, one white coloured car came there with four persons, out of them, one person was Avinash Chavan who is the co-accused and the present applicant was also along with the said Avinash Chavan. The said Avinash Chavan took out a knife and put on the chest of the informant and snatched the mobile phone and cash Rs.7,000/-. It is further alleged that he threatened not to stop the vehicle and asked the driver to unload the sand. Accordingly, they have unloaded the sand and fled away. Though the Tahsildar Pawar asked him not to unload truck and come with the said truck in Tahsil Officer, but the co-accused has taken the said truck. The Tahsildar was also assaulted by the knife by the co-accused Avinash Chavan and by the present applicant by means of iron rod. The other persons have also assaulted the Tahsildar by fist and kick blows due to which he has sustained the bleeding injury. On the basis of the said report, police have registered the crime against the present applicant.

3. During the initial investigation, the eight accused persons were arraigned as an accused including the present applicant. As far as the

allegation against the present applicant is concerned, it was alleged that he has assaulted the Tahsildar who is injured in the said incident and as his association was revealed along with the members of the organized crime syndicate. During the investigation, the investigation agency sent a proposal for application of provisions of the MCOC Act. Accordingly, the approval was granted under Section 23(1)(a) of MCOC Act. It is alleged that the present applicant was associated with the members of the organized crime syndicate and thereby in furtherance of the common object of the said syndicate the members of the said syndicate have committed various offences.

4. Heard learned Counsel for the applicant who submitted that the other co-accused are released on bail by this Court and the present applicant shall be released on the ground of parity. He submitted that as far as the previous offences are concerned, not a single offence is registered against the present applicant and therefore, the provisions of the MCOC Act are not applicable against the present applicant. He submitted that now the investigation is already completed and charge-sheet is already filed. In view of that, the applicant be released on bail. He further submitted that initially the applicant was arrested on 30.01.2021 thereafter he was released on bail on 07.05.2022 and due to the cancellation of bail by this Court by order dated 03.06.2022 he

again surrendered before the investigating agency and therefore, he is behind bar. He submitted that considering that no single charge-sheet is filed against the present applicant. The requirement of filing of the two charge-sheets on the date of application of the MCOC Act is not complied with and therefore, the provisions of the MCOC Act are not applicable against the present applicant. Considering the role attributed to the present applicant he has made out a case for grant of bail. In view of that, he be released on bail.

5. Learned APP strongly opposed the said application and invited my attention towards the recitals of the FIR as well as various statements of the witnesses and submitted that the role of the present applicant is specifically narrated by the eye witnesses which shows that there was not only presence of the present applicant along with the members of the organized crime syndicate, but he was involved in the assault. He further submitted that it is not the requirement of law that against every member two charge-sheets should be filed and that requirement is to be fulfilled for application of provisions of the MCOC Act. He submitted that considering the direct role attributed to the present applicant in the alleged crime and in view of rigour under Section 21(4) of the MCOC Act, moreover, there is no change in circumstances. In view of that, the application deserves to be rejected.

6. Having heard both the sides and perused the investigation papers, it reveals that an allegation against the applicant is that on the date of the incident he along with the other co-accused came on the spot in a car. The other co-accused – Avinash Chavan was holding knife in his hand and the present applicant was holding iron rod and gave a blow of iron rod on the person of the Tahsildar who was discharging his official duty. As far as the FIR and the various statements are concerned, the specific role is attributed to the present applicant. The statement of the eye witness as well as the injured witness specially assigns the role to the present applicant. Moreover, the iron rod is also seized at the instance of the present applicant. Thus, considering the various statements including the statement of the injured and the eye witness, the involvement of the present applicant revealed from the investigation papers.

7. To apply the provisions of the MCOC Act 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 an organized crime syndicate and in respect of which more than one charge-sheets have been filed. The stress is on the unlawful activities by the organized crime syndicate.

8. 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.

9. 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, or 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.

10. 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-sheets have been filed before a competent Court.

11. 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 provisions of the MCOC Act can be applied.

12. It is the membership of the said syndicate which makes a person liable under the MCOC Act.

13. As far as the involvement of the present applicant in the offence and applicability of the MCOC Act is concerned, the association of the present applicant with the other members of organized crime against whom the requirement of filing of the two charge-sheets and cognizance taken by the Court is concerned is complied with. It is not the requirement

of law that against every member there should be two charge-sheets filed within the preceding ten years. The requirement is only to the extent that the two charge-sheets have been filed against the organized crime syndicate. The members may act either singly or jointly in commission of the organized crime. The association of the person with the organized crime syndicate is sufficient to attract the provisions of the MCOC Act.

14. I have scrutinized the material on record on the rigour envisaged under Section 21(4) of the MCOC Act. It is well settled principle that the stringent provisions fetter, to a large extent, the discretion of the Court to grant bail unless the material on record warrants recording a satisfaction of existence of reasonable grounds to believe that the accused may not be involved in offence punishable under the MCOC Act and the accused is not likely to commit an offence under the MCOC Act, if released on bail.

15. The satisfaction that reasonable grounds exists to believe that the accused is not involved in an offence under the MCOC Act, enjoins upon the Court a duty to probe deeper into the material on record. A case which is stronger than a *prima facie* case, and the existence of substantial cause and circumstances which individually may impel the Court to record the satisfaction which is envisaged, is

necessary to unshackle the fetters. However, it is equally well settled, that the fetters cannot be stretched too far and the Court is not expected to record a finding of innocence.

16. Thus, in view of Section 21(4) there should be *prima facie* satisfaction regarding the involvement of the person who applied for the bail. Thus, Section 21(4) of the MCOC Act mandates that no person accused of an offence punishable under the MCOC Act shall, if in custody, be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application of such release and where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

17. Considering the evidence collected during the investigation, at this stage, it is difficult to record the satisfaction that there are no reasonable grounds to believe that he is not guilty. On the contrary, there is a direct evidence to show that there are sufficient material for believing that he is guilty of such offence and therefore, in view of the rigour under Section 21(4) of the MCOC Act, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

(10)

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The application is rejected.

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

Sarkate