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

CRIMINAL APPLICATION (BA) NO. 836 OF 2024

Wasim s/o Rashid 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

Mr. V.R. Thote, counsel for applicant.
Mr. A.V. Palshikar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/10/2024.

1. By this application, the applicant seeks 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, 332 of the Indian Penal Code, 1860 along with Section 3(1)(iii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to 'the MCOC Act).

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 a Talathi in the office Tahsildar Umerkhed, District Yavatmal, who lodged the 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 the sand from Vidul Khand-1 Nala, therefore the Naib Tahsildar Vaibhav Kumar proceeded towards the spot, but while proceeding towards the spot near Gawande College at around 11:20 witness one Tipper which was proceeding towards the spot, at the relevant

time, the person who was in the said Tipper called somebody and thereafter, one white colored car came there. Out of them, one person was Avinash Chavan, and present applicant, and the other two persons, get down from the said car. The Avinash Chavan took out the knife and put on the chest of the informant and snatched a mobile phone worth Rs.14,000/- and cash amount of Rs.7,000/-. He further threatened not to stop the vehicle and asked the driver to unload the sand accordingly. The applicant has unloaded the sand, and the co-accused unloaded the sand and fled away from the spot. Though Tahsildar Pawar asked them not to unload the said truck and take the said truck to the Tahsil Office, the Tahsildar also assaulted with the knife by the co-accused Avinash Chavhan by giving a blow on his stomach. The other persons have also assaulted the Tahsildar by fist and kick blows, due to which he sustained the bleeding injury. The said persons also assaulted the informant by means of rod. On the basis of said report, the police have registered the crime as aforesaid.

3. During the investigation, the accused persons were arraigned as an accused, and the present applicant is the accused No. 5 and arrested subsequently.

4. Learned counsel for the applicant submitted that as far as the application of the provision of MCOC Act is concerned, the two offences are registered against him which are in his individual capacity. He submitted that there is no material on record to show that he is member of

organized crime syndicate and his involvement is in the continuing unlawful activity along with other members of the organized crime syndicate. He submitted that, as far as the investigation papers are concerned, which only shows that two offences are registered against the present applicant, but as far as the crime chart is concerned, it nowhere shows that the applicant was commonly arraigned as an accused along with the co-accused to show that he is the member of that organized crime syndicate. He submitted that no overt-act is attributed to the present applicant, only overt-act is attributed to the co-accused and other co-accused are already released on bail. In support his contention, he placed reliance in the case of **Mohd. Iliyas Mohamad Bilal Kapadiya Vs State of Gujarat [(2022) 13 SCC 817]**

5. He further submitted that applicant is behind bar since 03/07/2022, there is no progress in the trial. In view of that, the applicant is entitled to be released on bail considering the long incarceration.

6. Learned APP strongly opposed the said application and submitted that as far as the role of the present applicant is concerned, who is the member of the organized crime syndicate which reveals from the statement, as the present applicant and co-accused Avinash Chavhan are the partners in a business, and they were involved in illegal activities like excavating the sand illegally. He submitted that the public

servant - Tahsildar is assaulted by giving knife blow, and at the relevant time, present applicant was present.

7. He further submitted that for attracting the provisions of the MCOC Act, it is not necessary that offence is to be registered against each member and the requirement is not that there should be two charge-sheet against each of the member. Mere association of the accused along with the organized crime syndicate, is sufficient to attract the provisions of the MCOC Act. He submitted that in view of rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected.

8. Heard learned counsels for both the sides and perused the investigation papers. The investigation papers shows that crime is registered initially against the co-accused and during the investigation, the involvement of the present applicant is also revealed. As far as the allegation of the MCOC Act, it 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 organized crime syndicate and in respect of which more than one chargesheets have been filed. 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.

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, as a member of an 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 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-sheet have been filed before a competent court.

11. Now, coming to the aspect that whether there is a nexus between the applicant and members of the "Organized Crime Syndicate". This court in the case of ***Govind Sakharam Ubhe vs. State of Maharashtra, [2009(3) Mh.L.J. (Cri.) 131]*** in paragraph No.37 defines "continuing unlawful activity". It has been 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".

12. 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.

13. The Hon'ble Apex Court in the case of ***Prasad Shrikant Purohit vs. State of Maharashtra[(2015)7 SCC 440]*** wherein it is observed that applicant is not involved in any criminal activities of the alleged "Organized Crime Syndicate". Since there is no nexus between the applicant and other members of the "Organized Crime Syndicate", the applicant is roped under the MCOC Act. However, the Hon'ble Apex Court further observed in paragraph No.89 observed, as under:

> *"89. A reading of paragraph 31 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 organized crime, if a nexus either with an accused who is a member of an 'organized crime syndicate' or with the offence in the nature of an 'organized 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 'organized crime', but when the nexus of such person with an accused who is a member of the 'organized crime syndicate' or such*

nexus is related to the offence in the nature of 'organized crime' is established by showing his involvement with the accused or the offence in the nature of such 'organized 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 organized crime in the manner set out in the said paragraph. In paragraphs 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."

14. In the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra [(2005)5 SCC 294],*** wherein also, the Hon'ble Apex Court observed, that even if a person may or may not have any direct role to play as regards the commission of an organized crime, if a nexus either with an accused who is a member of an "Organized Crime Syndicate" or with the offence in the nature of an "Organized 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 "Organized Crime", but when the nexus of such person with an accused who is a member of the

"Organized Crime Syndicate" or such nexus is related to the offence in the nature of 'organized crime' is established by showing his involvement with the accused or the offence in the nature of such 'organized crime', that by itself would attract the provisions of MCOC Act.

15. In the case of ***Shabhana Parveen vs. State of Maharashtra) Criminal Writ Petition No.1959/2021*** wherein the Division Bench of this Court at Principal Seat, wherein also, it is observed that membership of the "Organized Crime Syndicate" which makes a person liable under the MCOC Act. What is of significance is the nexus or the link of the person with "Organized Crime Syndicate". It is not the requirement of law that two charge-sheets for the cognizable offences punishable with imprisonment for three years or more need be filed against each of the members of such syndicate. Thus, what is required is to show that there was a nexus with members of the "Organized Crime Syndicate".

16. Coming to the facts of the present case, it reveals from the investigation papers that crime is registered on an allegation that as the public officer that Talathi and Tahsildar have received the information regarding the illegal excavation of sand, therefore they proceeded at the spot. On the way present applicant and other co-accused were restrained and they were asked to not to unload the sand but they have unloaded the sand, and not only they have unloaded the sand, but Tahsildar who was discharging his duty and he was assaulted to the extent that he has

sustained the stab injury on the vital part of the body. During investigation various statements are recorded and from which it reveals that, at the relevant time present applicant was also present along with the co-accused. It is alleged that all the co-accused and co-accused Avinash Chavhan have manhandled the Tahsildar as well as Talathi assaulted them. As observed earlier, the presence of the present applicant revealed along with the members of organized crime syndicate. The crime chart is also placed on record which shows that in all four offences are registered against the present applicant. Thus, there are criminal antecedents against the present applicant. As far as his nexus with the co-accused is concerned, which reveals from the statement as the applicant and other co-accused Avinash Chavhan, who has dealt a knife blow on the injured are running the business together and they are involved the illegal excavation of the sand.

17. The another ground raised by the applicant is that, he was arrested 24/1/2021 thereafter released on bail on 07/05/2021, the bail granted was cancelled on 13/06/2022 and therefore, he surrendered before the Court on 3/07/2022. Thus since 03/07/2022 he is behind bar and there is no progress in the trial as charges are yet not framed. Thus on the ground of delay in trial also, the learned counsel for the applicant claims that he shall be released on bail.

18. The Hon’ble Apex Court in the case of ***Gurwinder Singh vs. State of Punjab and anr, reported in AIR 2024 SC 952*** wherein the case of Union of India vs. K.A.Najeeb [***(2021) 3 SCC 713]*** is distinguished and observed that the appellant has been in jail for last five years and it is further observed that in the case of Union of India vs. K.A.Najeeb this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. It is further observed that mere delay in trial pertaining to grave offence as one involved in the instant case cannot be used as a ground for grant of bail.

19. Thus, material on record as discussed above, especially the association of the present applicant with the alleged offence, his presence at the time of alleged offence and the various statement recorded during the investigation showing the involvement of the present applicant and showing that he is the member of organized crime syndicate and it is also established that there is a nexus between the co-accused and the members of the organized crime syndicate.

20. While considering bail application when offence is committed under the special statute like MCOC Act having regard to the provisions contained in Section 21(4) of the MCOC Act, the court has to probe into the matter deeper so also enable it to arrive at a finding that materials collected during the investigation may not justify 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 organised crime either directly or indirectly.

21. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he has possessed of the requisite mens rea. While dealing application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, Section 21(4) has to be kept in mind.

22. Thus, the satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 of the MCOC Act regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is nothing more than prima facie grounds.

23. Considering the material on record disclosing involvement of the applicant and his presence at the time of

the incident as well as his association with the other co-accused, it is difficult to come to conclusion that the applicant is not guilty of offences on the basis of "reasonable grounds". The expression "reasonable grounds" 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.

24. In view of the above said well settled legal position, and considering the involvement of the applicant which is substantiated by the sufficient material on record, it is difficult to conclude that the involvement of the present applicant which is apparent and therefore it is difficult to come to the conclusion that he is not guilty of offences, therefore rigor under Section 21(4) of the MCOC Act comes into play.

25. In the light of the above, the application stands **rejected** and disposed of accordingly.

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