IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.862 OF 2024
Surendra s/o Fattu Pipardhare
..vs..
State of Maharashtra, through PSO PS Gobwerwahi, Tahsil Tumsar, District Bhandara

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

Shri C.B.Barve, Counsel and Shri Parth Malviya, Advocate for the Applicant.
Mrs.Shamsi Haider, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 16/10/2024
PRONOUNCED ON : 21/10/2024

1. By this application, the applicant seeks regular bail in connection with Crime No.291/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 143, 147, 148, 149, 201, 212, 216, and 302, of the Indian Penal Code and 3 and 4 of the Arms Act and 135 of the Maharashtra Police Act and 3 of the The Maharashtra Control of Organised Crime Act, 1999 (MCOC Act).

2. The applicant is arrested on 29.12.2023 and since then he is in jail.

3. The crime is registered on the basis of a report

lodged by Shahid Ahmad Khan Pathan (the informant), who is working as Supervisor with "Shri Sai Minerals Company". As per allegations, Naeem Siraj Sheikh (the deceased) was acquainted with the informant as he was resident of the same village. On 24.9.2023, the deceased called the informant and informed that he has to visit Tirora for checking Manganese Samples. On 25.9.2023, the informant reached the house of the deceased at about 12:00 noon and they both proceeded in a "White Creta Car" bearing registration No.MH-36/Z-0241. One Javed and Ratna Pal were also along with them. At Tirora, one person shown Sample of Manganese to the deceased at one Tea Stall and, therefore, they started for Tumsar at about 3:00 pm. At around 5:00 pm, they reached mouza Gobwerwahi Railway Gate and as the Railway Gate was closed, they were waiting for passing the train. At the relevant time, suddenly, some persons, including co-accused Santosh Dahat and Satish Dahat got down from "White Tavera Car" bearing registration No.MH-31/EU/1290 and Santosh Dahat fired bullets two times towards the deceased. Co-accused Satish Dahat also broke glasses of the Car. As bullet hit the deceased, the deceased was lying in a pool of blood and other co-accused also assaulted him.

On the basis of the said report, the police registered the crime against the applicant.

4. During investigation, it revealed that co-accused Narendra, the brother of the applicant, was following the deceased and was communicating location of the deceased to the applicant and the applicant was sharing the same with co-accused Vinek Sandekar. It is alleged that co-accused Santosh Dahat is leader of the "Organized Crime Syndicate" and in pursuance of common object of the said syndicate, he is involved in series of offences, which are committed for pecuniary gain and, therefore, the applicant was arraigned as accused.

5. Heard learned counsel Shri C.B.Barve for the applicant and learned Additional Public Prosecutor Mrs.Shamsi Haider for the State.

6. Learned counsel for the applicant submitted that with baseless allegations, the applicant is implicated in offences. In fact, name of the applicant is neither mentioned in the First Information Report nor in approval obtained by the investigating officer for applying provisions of the MCOC Act. The approval order does not reflect the name of the applicant. The applicant

.....4/-

has, absolutely, no concern with the crime or with other co-accused persons. There is no nexus between the applicant and other co-accused. As far as confessional statements of other co-accused persons are concerned, the same also do not disclose role of the applicant, which is sufficient to infer that the applicant was not member of the "Organized Crime Syndicate". The brother of the applicant was working with the deceased. As far as CDRs are concerned, the same are concerned between the applicant and his brother and on the basis of the same, it cannot be held that the applicant is member of the "Organized Crime Syndicate" and involved in the "Organized Crime". There is no single offence registered against the applicant along with members of the "Organized Crime Syndicate". Insofar as offences against the applicant are concerned, the same are in his individual capacity.

Thus, considering the same, the applicant be released on bail.

7. Learned counsel for the applicant, in support of his contentions, placed reliance on following decisions:

1. Nilesh vs. State of Maharashtra, reported in 2021 SCC OnLine Bom 6241;

2. Pawan Kumar Rajak vs. The State of Bihar, decided by the Patna High Court on 23.2.2022;

3. Deepak Nagiya vs. State (NCT of Delhi), reported in 2023 SCC OnLine Del 5641;

4. Shakil Ahmed Peer Mohd.Shaikh vs. Union of India and anr, reported in 2024 SCC OnLine Bom 832;

5. Bail Application No.4184/2023 (Roma Arif Shaikh vs. The State of Maharashtra) decided by this court on 29.4.2024;

6. Gulam Sarbar vs. State of Bihar, reported in (2014)3 SCC 401;

7. Prashant s/o Jaideo Wasankar vs. State of Maharashtra, through PSO Police Station, Ambazari, Nagpur, reported in 2016 SCC OnLine Bom 8003, and

8. Dinesh Bhodulal Baisware vs. State of Maharashtra, through PSO, reported in 2016 SCC OnLine Bom 4788.

8. Learned Additional Public Prosecutor for the State opposed the application and submitted that statements of witnesses sufficiently show involvement of the applicant with members of the "Organized Crime Syndicate". The statements of witnesses show that the applicant was not only in contact with his brother but also in contact with co-accused persons. The statements further show that when the co-accused was following

the deceased, he was continuously in contact with the applicant, who is his brother, and the applicant was in contact with other co-accused Vinek Sandekar. There were Conference Calls between the applicant, other co-accused Vinek Sandekar, and gang leader Santosh Dahat.

Thus, sufficient material is on record to show that there is a nexus between the applicant and members of the “Organized Crime Syndicate”.

In view of that, the application deserves to be rejected.

9. Learned Additional Public Prosecutor for the State also relied upon the decision of the Hon’ble Apex Court in the case of **Subhash Mohan Pawar vs. State of Maharashtra, reported in AIR OnLine 2021 Bom 306**.

10. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused entire investigation papers of the crime in question, it reveals that after obtaining an approval under Section 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 crime is concerned, admittedly, his name is not mentioned in the First Information Report. During the investigation, it revealed that the brother of the applicant namely Narendra, accused No.14, was following the deceased in a "Swift Car". The applicant was continuously in contact with his brother as well as Vinek Sandekar. There were three Conference Calls on day of the incident between the applicant, co-accused Vinek Sandekar, and gang leader Santosh Dahat. There were in all nine calls between the applicant and co-accused Vinek Sandekar on the day of the incident. The CDRs and Tower Location show link between the applicant and the other co-accused. During the investigation, CCTV Footage was collected wherein it revealed that two Cars were following the deceased. There was a rivalry between groups of the deceased and co-accused Santosh Dahat.

11. Thus, involvement of the applicant reveals, as per the prosecution, on the basis of CDRs and Conference Calls on the day of the incident.

12. The investigating officer has also placed on record

the crime chart, which shows that several offences are registered against leader of the “Organized Crime Syndicate”, which are committed for pecuniary gain.

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 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 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 our economy. It was seen that the organized criminal syndicates made 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 there 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 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.

19. 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.

20. 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,** submitted that as the applicant is not shown to be involved in any of criminal antecedents of the alleged organized crime syndicate, since there is incontrovertibly no nexus between the present offence and cases registered against members of organized crime syndicate, the applicant could not have been roped under the MCOC Act. However, in paragraph No.85 of the decision in the case of **Prasad Shrikant Purohit vs. State of Maharashtra** *supra,* the Honourable Apex Court observed, as under:

"85. A reading of para 31 in Ranjitsing

Brahmajeetsing Sharma 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 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 MCOCA. 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 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 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 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."

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 MCOCA 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 MCOCA. 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 MCOCA.

23. The objection raised by learned counsel for the applicant is that there was no approval against the accused as prior approval under Section 23(1)(a)of the MCOC Act is required.

24. Insofar as part of the approval is concerned, the Hon'ble Apex Court in the case of **Kavitha Lankesh vs. State of Karnataka and ors, reported in (2022)12 SCC 753** in paragraph No.26 observed, thus:

> "Concededly, the original FIR registered in the present case was for an ordinary crime of murder against unknown persons. At the relevant time, the material regarding offence having been committed by an organized crime syndicate was not known. That information came to the fore only after investigation of the offence by the SIT, as has been mentioned in the report submitted to the Commissioner of Police, Bengaluru City for seeking his prior approval to invoke Section 3 of the 2000 Act. Once again, at this stage, the Commissioner of Police had focused only on the *factum* of information regarding the

> commission of organized crime by an organized crime syndicate and on being prima facie satisfied about the presence of material on record in that regard, rightly proceeded to accord prior approval for invoking Section 3 of the 2000 Act. The prior approval was not for registering crime against individual offenders as such, but for recording of information regarding commission of an offence of organized crime under the 2000 Act. Therefore, the specific role of the concerned accused is not required to be and is not so mentioned in the stated prior approval. That aspect would be unravelled during the investigation, after registration of offence of organized crime. The High Court, thus, examined the matter by applying erroneous scale. The observations made by the High Court in the impugned judgment clearly reveal that it has glossed over the core and tangible facts.

The Honourable Apex Court further held, that what is crucial in this provision is the *factum* of recording of offence of organized crime and not of recording of a crime against an offender as such.

25. Thus, contention of learned counsel for the applicant, that prior approval is not reflecting the name of the applicant, in view of above observations, the same contention is not sustainable.

26. The next contention of learned counsel for the applicant is, that there is absolutely no evidence against the applicant to show that the applicant is involved in the "Organized Crime" along with Members of the "Organized Crime Syndicate".

27. The statements of witnesses disclose that the brother of the applicant was following the deceased by his Car. The statements further disclose that on the way, he was receiving calls of the applicant. The CDRs show that there was nine calls between the applicant and co-accused Vinek Sandekar on the day of the incident, out of which three calls were Conference Calls between the applicant, co-accused Vinek Sandekar, and gang leader Santosh Dahat.

28. As far as involvement of co-accused Santosh Dahat in the incident is concerned, there is a direct evidence against him. CDRs and Conference Calls, on the day of the incident, at the relevant time, throughout a day, sufficiently show involvement of the applicant in the alleged incident.

29. As far as decisions, as to call details, relied upon by learned counsel for the applicant, are concerned, the same can be

distinguished on the basis of facts. Those are cases where applicants therein have received one or two calls.

30. In the present case, throughout a day, there were continuous calls between the applicant and his brother as well as the applicant and co-accused Vinek Sandekar.

31. Moreover, the applicant has not disclosed in his application as to his criminal antecedents.

32. Every party approaching a court is expected to make full and correct disclosure of material facts and needs to be emphasized that he should not conceal any information from the court.

33. Learned counsel for the applicant placed reliance on the decision of the Patna High Court in the case of **Pawan Kumar Rajak** *supra* and submitted that mere knowledge or discussion or generation of crime in the mind of accused is not sufficient to constitute an offence. The said observation is on the basis of the evidence adduced therein.

34. In view of the well settled legal position, merely because the crime is not registered against the applicant along

with other co-accused that by itself is not sufficient to say that he is not related with the "Organized Crime Syndicate". The nexus of the applicant with c-accused persons, who are members of the "Organized Crime Syndicate", is sufficient to attract provisions of the MCOC Act.

35. As observed by this court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131**, 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.

36. Thus, the material on record before this court *prima facie* shows association of the applicant along with the co-accused involving in the organized crime syndicate. Also,

statements of witnesses, show involvement of the applicant in the alleged offence.

37. 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.

In the present case, the said requirement, at this stage, is established by the prosecution.

38. 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, statements and objects of the Act are 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 grant

of bail and materials placed by the prosecution are considered, the applicant has 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 accused of offence punishable under the said Act subject to 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.

39. 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 applicant.

40. As observed by the Hon'ble Apex Court in the case of **The State of Maharashtra vs. Vishwanath Maranna Shetty (Cr.Appeal No.1689/2012) decided by the Hon'ble Apex Court on 19.10.2012**, while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into

the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a 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 organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite *mens rea*. It is further observed by the the Honourable Apex Court that while dealing with application for grant of bail, in addition to broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

41. Thus, satisfaction contemplated under clauses (a) and (b) of sub-section (4) of Section 21 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.

42. 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.

43. 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.

44. In view of the above well settled legal position, at this stage, there is a *prima facie* material against the applicant and, therefore, rigour under Section 21(4) of the MCOC Act

comes into play.

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

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!