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

CRIMINAL APPLICATION (BA) NO.954 OF 2023
(Vaibhav @ Balu Subhash Wankhede 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. V.R. Thote, Advocate for the applicant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 24, 2024.

By this application, the applicant is seeking bail in connection with Crime No.57/2021 registered with Umarkhed Police Station, District Yavatmal for the offences punishable under Sections 307, 397, 395, 353, 332 of the Indian Penal Code along with 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 Vithalrao Suroshe, who claims to be serving as a Talathi in the office of Tahsildar, Umarkhed who 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 the sand from Vidul Khand-1 Canal. Therefore, the Naib Tahsildar Vaibhav Pawar while proceeding towards the spot near Gawande College at about 11.20 p.m. witnessed one tipper was proceeding towards the

spot, at the relevant time the person who was in the said tipper called somebody and thereafter, one white colour Car came there with four persons. Out of them, one person was Avinash Chavan, who is the co-accused, the other persons were unknown. Said Avinash Chavan took out the knife and put on the chest of the informant and snatched the mobile worth of Rs.14,000/- and cash 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 fled away from the spot. Though Tahsildar Pawar asked them not to unload the truck and take the said truck in the Tahsil Office. The Tahsildar was also assaulted by the knife by the accused No.1 Avinash Chavan by giving blow on his stomach. The other persons have assaulted the Tahsildar by fists and kick blows, due to which he has sustained the bleeding injury. The said persons also assaulted the informant by means of rod. On the basis of said report, police have registered the crime as aforestated.

3. During the investigation, the eight accused persons were arraigned as an accused and the present applicant is accused No.8 and arrested accordingly. The co-accused – Vishal s/o Raju Chavan is already released on bail by this Court vide order dated 19/01/2024 in Criminal Application (BA) No.85/2023.

4. Learned Counsel for the applicant submitted that initially, the applicant was released on bail thereafter the State has filed an application for cancellation of bail

bearing Criminal Application (APPLN) No.48/2021. This Court cancelled the bail, as bail on the ground that the order passed the Sessions Judge is cryptic. In view of the order passed by this Court, applicant surrendered and applied for bail which was rejected. During the investigation, the investigating agency send the proposal for application of provisions of MCOC Act. Accordingly, the approval was granted under Section 23(1)(a) of the MCOC Act. It is alleged that 21 offences are registered against co-accused Avinash Chavan. 28 offence are registered against another accused Anil Kale and 27 crimes are registered against the co-accused Vikas Ban. Three crimes are registered against co-accused Deepak Chavan and Wasim Khan and present crime is registered against the present applicant. As per the crime chart, present crime is the only offence registered against the present applicant. As per the case of the prosecution, present applicant is the member of organized crime syndicate and in furtherance of common intention of the said crime syndicate, he is involved in the offence and assaulted the Tahsildar as well as Talathi.

5. It is submitted by the learned Counsel that except the presence of the present applicant there is no other material to connect the present applicant with the alleged offence. He submitted that though the applicant was identified during the identification parade and his confessional statement is recorded but no overt act is attributed to him. Only role attributed to him that he was

driving the tipper and unloaded the sand though he was asked not to unload the said tipper.

6. On perusal of the entire charge-sheet, except the presence of the present applicant no other material is brought on record. There is nothing on record to show that he is a member of organized crime syndicate and in furtherance of the common object of the said syndicate, he has committed any offence. He further submitted that the confessional statement which is recorded also shows only his presence and it cannot be used against the present applicant. In fact, the entire charge-sheet nowhere shows that the applicant is a member of organized crime syndicate and in furtherance of common object, he had committed the said offence. It is submitted that in view of the same, the applicant be released on bail.

7. In support of the contention, learned Counsel for the applicant placed reliance on ***Mohamad Iliyas Mohamad Bilal Kapadiya Vs. State of Gujarat [2022 SCC OnLine SC 713]*** wherein it is held that two requirements have to be satisfied to attract the provision of MCOC Act. The first one is that an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. The second one is that in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last 10 years.

8. He further placed reliance on ***Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra and***

anr. [2005 ALL MR (Cri) 1538 (S.C.)] and ***Tanaji s/o Narayan Sathe Vs. The State of Maharashtra [2019 All MR (Cri) 3773]*** and wherein it is held that accused not shown to be involved in main offence of robbery and murder, no material to suspect his being member of organised crime syndicate and involved in its continuous activity. He came on scene post commission of offence. No material to suggest that accused have been wary of offence in question and he consciously bought looted sago bags.

9. *Per contra*, learned Additional Public Prosecutor for the State submitted that the presence of the present applicant was stated by the informant as well as the injured. The co-accused Avinash Chavan who is a gang leader against whom 21 offences are registered. The applicant is the member of the said gang and it is not necessary that crime is to be registered against the present applicant to attract the provisions of the MCOC Act. He further submitted that in view of a rigor under Section 21(4) of the MCOC Act, the applicant cannot be released on bail. He further submitted that the applicant is identified during the identification parade and therefore, the role of the present applicant cannot be equated with the role of Vishal Raju Chavan who is already released on bail.

10. Having heard both sides and perused the investigation papers, it reveals that an allegation against the applicant is that on the date of incident, he along with other co-accused was driving the tipper wherein

transporting the sand illegally. As the tipper was intercepted by the Tahsildar who is injured in the said incident and the informant Talathi also. Avinash Chavan who is the co-accused was called and the alleged incident has taken place. The co-accused Avinash Chavan who was holding the knife in his hand and gave a blow of knife on the abdominal portion of the Tahsildar, who was discharging his duty. The FIR and various statements are concerned, the only role attributed to the present applicant is that he was driving the tipper at the relevant time and transporting the sand illegally. The statement recorded of the present applicant under Section 18 of the MCOC Act also shows that on the day of incident he was asked by the co-accused Avinash to drive the tipper wherein the sand was loaded and accordingly he was proceeding with the tipper and the tipper was intercepted by the informant and the injured witness. As far as incident of the assault is concerned, at the relevant time, the applicant was not present at the spot as he has already left the place along with the tipper. The allegation against the present applicant is also that though he was asked to park the tipper in the Tahsil office he has unloaded the tipper and fled away from the spot of incident.

11. To apply the provisions 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 charge-sheets 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.

12. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized 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 purpose. 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 charge-sheets have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

13. 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.

14. 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 MCOC Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOC Act.

15. I have scrutinized the material on record on the rigor 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.

16. 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. If on broad probabilities which emerge from the material on record, a satisfaction can be recorded that the accused is not likely to be convicted, the Court would be justified in granting bail.

17. The present applicant undisputedly, not involved in any criminal activity along with either the alleged gang leader of the organized crime syndicate Avinash Chavan or with any member namely Anil Kale, Vikas Ban, Deepak Chavan and Wasim Khan prior to the registration of the present crime. I have not came across any material in the charge-sheet to link the present applicant Vishal Chavan either with the earlier offences registered against the co-accused or with the activities of the organized crime syndicate.

18. Generally speaking and considering the material which according to the prosecution shows the role of the present applicant in the crime that only to the extent of he was driving the tipper wherein the sand was illegally transported. Though he is identified during the identification parade but the role attributed to the present applicant is only to the extent that he was obeying the order of his employer.

19. In the light of the above facts, admittedly, no offence is registered against the applicant showing that he has generated any illegal wealth by involving himself in a continuous illegal activity. There is no material to show that the existing legal framework and procedural law are inadequate to deal with the present applicant. Except the present offence, none offence is registered against him showing that he had committed the offence to gain illegal wealth.

20. For enabling the Court to exercise its discretion in favour of a person the accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the Court is not guilty of an offence of organized crime. The satisfaction that the accused is not guilty is to be on the basis that there are reasonable grounds for believing that the accused is not guilty. The phrase ‘reasonable ground’ is not similar to the sufficient grounds.

21. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of *Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr.* (supra) held that the restriction imposed by Section 21 (4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Honourable Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provisions and what is required is that the satisfaction that there are reasonable grounds for believing the accused to be not guilty. The phrase "reasonable grounds" should not be confused with the phrase "sufficient grounds". It cannot be lost sight of

the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Hon'ble Apex Court has observed in the case cited supra that it is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

22. In the light of the above principles, if facts in the present case considered, admittedly, the name of applicant is mentioned in the FIR. The statements of the witnesses and the confessional statement of the applicant only shows his role that he was driving the tipper and there is no other material to show that either he had committed the offence as a member of organized crime syndicate. The crime chart shows that except this offence, no other offence is registered against the applicant in his individual capacity. The investigation papers nowhere show that he has committed any offence to gain economic gain and pecuniary benefits or other advantages for himself or any other reasons.

23. Thus, there are certainly reasonable grounds to hold that the applicability of the MCOC Act is doubtful. The nexus between the present offences and the earlier offences committed by the accused are also not demonstrated on the basis of some evidence on record.

24. For the reasons recorded above, the application deserves to be allowed. Hence, I proceed to pass the following order :

(i) The criminal application is allowed.

(ii) The applicant - Vaibhav @ Balu Subhash Wankhede in connection with Crime No.57/2021 registered with Umarkhed Police Station, District Yavatmal, for the offences punishable under Sections 307, 397, 395, 353, 332 of the Indian Penal Code along with Sections 3(1)(iii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, be released on bail on his executing a P.R. Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(iii) The applicant shall attend the concerned Police Station first day of every month, till conclusion of the trial.

(iv) The applicant shall not leave the jurisdiction of the District Court, Yavatmal without prior permission of the said Court.

(v) The applicant shall not indulge in the similar type of activities.

(vi) Contravention of any of conditions above leads to cancellation of the bail.

(URMILA JOSHI-PHALKE, J.)

**Divya*