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

CRIMINAL APPLICATION (BA) NO. 221 OF 2024
ASHISH S/O KISAN GAVAI AND ANOTHER
Vrs.
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

---

Shri R. K. Tiwari, Advocate for applicants.
Shri D. V. Chauhan, Government Pleader for respondent-State.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 21/03/2024.

1. Heard Shri R. K. Tiwari, learned counsel for the applicants and Shri D. V. Chauhan, learned Government Pleader for the State.

2. By this application, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure along with Section 21(4) of the Maharashtra Control of Organized Crimes Act, 1999 in connection with Crime No.240/2023 registered under Sections 143, 147, 149, 386, 294, 323 and 506 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (For short, “MCOC Act”).

3. The applicants came to be arrested on 04/08/2023 on an allegation that the complainant is working as Manager at the Restaurant namely; Farmhouse Kitchen situated at Bajaj Nagar and in the intervening

night of 26/07/2023 and 27/07/2023 at about 1.15 a.m., the applicants and other co-accused had been at the Restaurant and are demanding food to the complainant. Since the kitchen of the restaurant was close, the complainant expressed his inability to provide food. By denial for providing the food by the complainant, the co-accused Sumit slapped the complainant and demanded Rs.50,000/- by showing gun. It is also alleged that the associates of the co-accused Sumit also assaulted the complainant by means of fist blows and abused him and then left the place. On 30/07/2023, the complainant lodged a report with the police, on the basis of which, the crime is registered.

4. The learned counsel for the applicants submitted that as far as the provisions of the MCOC Act are concerned, which are not applicable against the present applicants as not a single offence is registered against them and there is sufficient record to show that the association of the present applicants with other members of the Organized Crime Syndicate even prior approval under Section 23(1) is granted against the other co-accused. The names of the present applicants are not mentioned in that. He further submitted that during investigation, the Investigating Officer has recorded the supplementary statement of the complainant wherein also, the names of the present applicants are not mentioned. Subsequently, the complainant has brought on record the video recording which allegedly recorded in his mobile

phone also, nowhere shows the presence of the present applicants. The present applicants were put in the Test Identification Parade. The complainant has not identified. Thus, there is no material against the present applicants to connect them with the alleged offence. There are no criminal antecedents against them to attract the provisions of the MCOC Act i.e. Maharashtra Control of Organized Crimes Act. He submitted that considering that there is no material to connect the present applicants with the alleged offence and the provisions of MCOC Act are not attracted. Therefore, rigour under Section 21(4) would not come into play. In view of that, applicants be released on bail.

5. Learned APP strongly opposed the application on the ground that considering the rigour under Section 21(4), the Court has to record the reasons that the applicants are not guilty of offence. At this stage, the statements of the witnesses show the involvement of the present applicants in the alleged offence and therefore, application deserves to be rejected.

6. Having heard learned counsel for the applicants and learned APP for the State, perused the investigation papers. On the basis of report lodged by the complainant, crime is registered under Sections 386, 294, 323 and 506 of the IPC and under Sections 3 and 25 of the Indian Arms Act. During investigation, the Investigating Officer has sent the proposal for applying the provisions of the MCOC Act. While granting prior

approval, the competent authority has considered the material against the four accused namely; 1] Sumit Chintalwar, 2] Swapnil @ Baba Bhoyar, 3] Ankush Verma and 4] Mayur Surve and as the competent authority was satisfied that there is crime syndicate and those persons are members of the organized crime syndicate granted the approval to attract the provisions of the MCOC Act. Subsequently, the sanction was granted by the competent authority to prosecute the present applicants under the provisions of the MCOC Act. As far as crime chart is concerned, not a single offence is registered against the present applicants reveals from the said crime chart. During investigation, the statement of the complainant is recorded. Admittedly, he has not narrated the names of the present applicants. The entire prosecution is upon the statement of the co-accused. The involvement of the present applicants is only on the basis of the statement of the co-accused. However, the confessional statements of the co-accused are not recorded during investigation. The present applicants were also put during Test Identification Parade and the complainant has not identified the same. On perusal of the statements of the witnesses, admittedly, the names of the present applicants are not mentioned by any of the witnesses.

7. Learned counsel for the applicants placed reliance on the order of this Court in Criminal Application (BA) No.255/2023 along with Criminal Application (BA) No.683/2023 decided on 16/01/2024, Criminal

Application (BA) No.843/2023 decided on 22/12/2023 and Criminal Application (BA) No.641/2021 decided on 18/11/2021 and submitted that this Court has considered the aspect of continuing unlawful activity and the organized crime syndicate and considering that no material is placed by the prosecution to show the involvement in the offences like; extortion, contract killing, etc. released the applicants on bail. Similarly against the present applicants also, there is no material to connect them with the present crime and there is no previous association of the present applicants with the members of the organized crime syndicate.

8. In view of that, the provisions of the MCOC Act are not attracted and therefore, rigour under Section 21(4) is also not attracted.

9. Considering the submission made by the learned counsel for the applicants to apply the provisions of the MCOC Act, it is necessary to consider the expression "continuing unlawful activity".

10. 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.

11. 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 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 of 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 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.

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 e] in respect of which more than one charge sheets 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. Learned counsel for the applicants submitted that there is no material to show that the applicants are either members of organized crime syndicate or they are involved in the said illegal activity of the organized crime syndicate whereas the learned APP submitted that it is not necessary that there should be crime registered against the present applicants. His association with the organized crime syndicate is sufficient to attract the provisions.

16. In the case of **Zakir Abdul Mirajkar Vrs. State of Maharashtra, reported in AIR OnLine 2022 SC 1325**, wherein provisions of the MCOC Act are analyzed by the

Hon'ble Apex Court. While analyzing provisions, the Hon'ble Apex Court laid down an overview of the MCOC Act by observing as follows :-

"The Maharashtra Control of Organized Crime Act, 1999, as its long title indicates, is "an Act to make special provisions for the prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto". The statement of objects and reasons contains the reasons which constituted the foundation for the legislature to step in :

Firstly, organized crime which is in existence for some years poses a serious threat to society;

Secondly, organized crime is not confined by national boundaries;

Thirdly, organized crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities;

Fourthly, the illegal wealth and black money generated by organized crime pose adverse effects on the economy;

Fifthly, organized crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;

Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organized crime; and

Seventhly, the special law was enacted with "stringent and deterrent provisions" including in certain circumstances, the power to intercept wire, electronic or oral communication.

17. In the light of the above facts, if the facts of the present case are taken into consideration, admittedly, no offence is registered against the applicants showing that they have generated illegal wealth by way of contract killing, extortion, smuggling, and contraband, illegal trade in narcotics, and money laundering etc. There is no material to show that the existing legal framework and procedural law are inadequate to deal with the present applicants. None of offences is registered against the applicants showing that they had in association with the organized crime syndicate.

18. 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 applicants before the court are 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.

19. 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 Vrs. State of Maharashtra and another, reported in 2005 ALL MR (Cri) 1538 (SC)** 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 oranized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Hon'ble 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.

20. In the light of the above principles, if facts in the present case considered, admittedly, the names of applicants are not mentioned in the FIR. While considering the proposal for prior approval also, the names of the present applicants are not before the competent court. There is no single crime registered against the present applicants even there is no material to show that the applicants are having any association with other members of the organized crime syndicate, the chart shows that no single offence is registered against the applicants either as a member of organized crime syndicate or in his individual capacity. The investigation papers nowhere shows that either they have committed offences for any economic gain or peculiar benefits or other advantages for themselves or for organized crime syndicate.

21. Thus, there are certainly reasonable ground to hold that applicability of the MCOC Act is doubtful.

22. For the reasons recorded above, application deserves to be allowed. Accordingly, I proceed to pass the following order :-

ORDER

i] The application is allowed.

ii] The **Applicants Nos.1] Ashish s/o Kisan Gavai and 2] Aditya s/o Bhimrao Telgote** be released on bail in connection with Crime No.240/2023 registered by Bajajnagar Police Station under Sections 143, 147, 149, 386, 294, 323 & 506 of the Indian Penal Code r/w Sections 3 and 25 of the Indian Arms Act and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act, 1999, on executing P. R. Bond of Rs.50,000/- each with one solvent surety of the like amount.

iii] The applicants shall attend the concerned police station, till conclusion of the trial.

iv] The applicants shall not leave the jurisdiction of the District Court, Nagpur without prior permission of the said Court.

v] The applicants shall not indulge in the similar type of activities.

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

23. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar