

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 290 OF 2024

The State of Maharashtra ... Applicant.
Vs.
Sudarshan Shivaji Babar ... Respondent.

Mr. A. A. Palkar, APP for the Applicant-State.
Mr. Pratik Tare i/b Mr. Sachin Mane, Advocate for Respondent-Accused.
Mr. Pradip Jadhav-PSI, Ichalkaranji, Dist. Kolhapur.

CORAM : ASHWIN D. BHOBE, J.

DATE : 17th JULY, 2025.

P.C. :

1. Heard Mr. A. A. Palkar, learned APP for the Applicant and Mr. Pratik Tare, learned Advocate for Respondent-Accused.

2. By the present Application, the State is before this Court seeking the following reliefs :-

“13. The Applicant, therefore, most respectfully prays that:-

a. Rule be issued;

b. That this Hon'ble Court may be pleased to quash and set aside the Order dated 06.01.2023 passed by the Ld. Special Court (MCOCA), Ichalkaranji granting regular bail to the Respondent/Orig. Accused No.6 in connection with the C.R.No.539 of 2021 registered with the Shivajinagar Police Station;

c. Any other further order as this Hon'ble Court deems fit and proper, in the interest of justice, be passed.”

3. Respondent is Accused No.6 in Crime No.539 of 2021 registered on 17.10.2021 with Shivajinagar Police Station under

Sections 302, 143, 147, 148, 149, 504, 506, 120(B) and 216 of the Indian Penal Code and under Sections 7 and 27 of Arms Act. Shubham Balaso Kane, Aditya Gorakhanath Sutar and 7 others, are co-accused in the said crime. Said crime is registered as Special (MCOCA) case No.25 of 2022 and is pending on the file of the Court of Session Court, Ichalkaranji District Kolhapur.

4. On the basis of report dated 07.10.2021 lodged by Raju Bandger against Shubham Balaso Kane and others, the said crime was registered. Case of the prosecution is that on 16.10.2021 a quarrel took place between Sumit Sing and Shubham Kane on a petty issue, which resulted in a fight and assault on the deceased Santosh @ Pappu Jadhav, who succumbed to the injuries. Investigation revealed that the Accused in the crime under the leadership of Sudarshan Babar were attempting to take control of Matka Business.

5. Respondent was arrested on 13th November, 2021. Bail Application at Exhibit-3 filed by the Respondent in Special (MCOCA) case No. 25 of 2022 was allowed by the learned Special Judge, Ichalkaranji vide its order dated 6th January, 2023 (impugned order). Special Judge, Ichalkaranji has assigned reasons for granting the Bail in paragraph Nos. 19, 20, 21, 22, 23 and 24 of the order of the order dated 6th January, 2023.

6. Mr. A. A. Palkar, learned APP for the Applicant, submits that the Respondent was earlier arrested in connection with Crime No. 155/2018 at Hatkanangale Police Station in respect of offences punishable under of the MCOCA and offences punishable under IPC, thus the Respondent was not entitled to bail in view of the provisions of

Section 21(5) of MCOCA. He submits that the impugned order does not contain reasons for releasing the Respondent on Bail. He submits that the impugned order suffers from perversity.

7. Mr. Pratik Tare, learned Advocate for Respondent, submits that the impugned order is a well-reasoned order. He submits that the Respondent was granted bail in Crime No. 155 of 2018 (which was registered as MCOC case No. 33 of 2020). He submits that the Special Court has acquitted the Respondent in the said Crime No. 155 of 2018. He relies on the order granting bail and the order acquitting the Respondent in the said crime No. 155 of 2018. He submits that the learned Special Judge has considered all the requirements of law while passing the impugned order. He submits that the Respondent has abided by all the conditions imposed in the order granting bail to the Respondent. He submits that there are no allegations of the Respondent having violated any of the bail conditions.

8. I have perused the records with the assistance of the learned Advocates.

9. Provisions of Section 21(5) of the MCOCA read as follows :-

(5) Notwithstanding anything contained in the code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

10. Respondent was arrested in connection with Crime No.155 of 2018 of Hatkanangale Police Station. The Special Court had granted bail to the Respondent in the said Crime No.155 of 2018 by its order dated 1st April, 2019. Paragraph 18 of the said order dated 1st April,

2019, reads as follows:-

“18. There is nothing on record to show that he has committed the offence along with other two co-accused. The offences were not committed with an object of financial gain. Therefore, in my opinion, the applicability of the provisions of MCOCA Act is doubtful.”

(emphasis supplied)

11. Bail granted to the Respondent in Crime No. 155 of 2018, would have to be treated as a bail in offence/s unconnected with MCOCA.

12. In the case of ***State of Maharashtra Vs. Bharat Shanti Lal Shah & Ors.***¹, the Hon'ble Supreme Court in paragraph 62, 63, 64 and 65 has observed as under:-

62. Having recorded our finding in the aforesaid manner, we now proceed to decide the issue as to whether a person accused of an offence under MCOCA should be denied bail if on the date of the offence he is on bail for an offence under MCOCA or any other Act. Section 21(5) of MCOCA reads as under:

“21. (5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.”

63. As discussed above the object of MCOCA is to prevent the organised crime and, therefore, there could be reason to deny consideration of grant of bail if one has committed a similar offence once again after being released on bail but the same consideration cannot be extended to a person who commits an offence under some other Act, for commission of an offence under some other Act would not be in any case in consonance with the object of the Act which is enacted in order to prevent only

¹ 2008 (13) SCC 5

organised crime.

64. We consider that a person who is on bail after being arrested for violation of law unconnected with MCOCA, should not be denied his right to seek bail if he is arrested under MCOCA, for it cannot be said that he is a habitual offender. The provision of denying his right to seek bail, if he was arrested earlier and was on bail for commission of an offence under any other Act, suffers from the vice of unreasonable classification by placing in the same class, offences which may have nothing in common with those under MCOCA, for the purpose of denying consideration of bail. The aforesaid expression and restriction on the right of seeking bail is not even in consonance with the object sought to be achieved by the Act and, therefore, on the face of the provisions this is an excessive restriction.

65. The High Court found that the expression "or under any other Act" appearing in the section is arbitrary and discriminatory and accordingly struck down the said words from sub-section (5) of Section 21 as being violative of Articles 14 and 21 of the Constitution. We uphold the order of the High Court to the extent that the words "or under any other Act" should be struck down from sub-section (5) of Section 21.

(emphasis supplied)

13. Thus, conclusions of the learned Special Judge in the impugned order for holding the bar under Section 21(5) of the MCOCA would not be applicable to the case of the Respondent, cannot be faulted.

14. In paragraph 25 of the impugned order, the learned Special Judge has made an endeavour to see the culpability of the Respondent and his involvement in the commission of the organized crime either directly or indirectly. On such consideration the learned Special Judge has observed that the role of the Respondent (Accused No.6) in the commission of the offence in Crime No. 539 of 2021 is suspicious. Learned Special Judge has considered the parameters required while dealing with an Application for bail.

15. In the case **Kailash Kumar Vs. State of Himachal Pradesh & Anr²** in paragraph No. 10 as observed as follows:-

10. The decision of this Court in Ajwar v. Waseem and Anr.1 , relied on by the High Court, has been perused. In terms of such decision, while seized of an application for cancellation/revocation of bail, the considerations (illustrative, not exhaustive) which ought to weigh with the courts are whether: (i) the accused has misused the concession of liberty; (ii) he has been delaying the trial; (iii) he has been influencing/threatening the witnesses; (iv) he has been tampering evidence in any manner; and (v) there has been any supervening circumstance after grant of bail warranting a relook. The decision also lays down that orders granting bail could be interfered with if the same are found to be perverse or illegal in the sense that the Court's conscience is shocked or extraneous material has been considered.

(Emphasis Supplied)

16. Mr. A. A. Palkar, learned APP for the Applicant was unable to point out of perversity in the findings / conclusions arrived by the learned Special Judge.

17. The impugned order considers all the relevant factors for granting bail to the Respondent. I do not find any infirmity or perversity in the order dated 6th January, 2023 passed by the learned Special Judge.

18. In view of the above, Criminal Application No. 290 of 2024 is dismissed is without any merits and I such dismissed.

(ASHWIN D. BHOBE, J.)