

Shabnoor

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

BAIL APPLICATION NO.3312 OF 2024

Babu Dhundappa @ Arjun Chintale	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Aditya Sharma for the applicant.

Mr. Prasanna P. Malshe, APP for the respondent-State.

Mr. Manoj Chalke, PI, SB-1/CID, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 25, 2025

P.C.:

1. By the present application, filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.” for the sake of brevity), the applicant seeks his enlargement on regular bail in connection with Crime Register No.61 of 2020, which has culminated into MCOC Special Case No.576 of 2020, registered with Kurar Police Station, Mumbai. The applicant stands arraigned for the commission of offences punishable under Sections 307, 387, 506(2), and 120B read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”); Sections 3, 25, and 27 of the Arms Act, 1959; Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951; as also Sections 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as “MCOC

Act”).

2. As per the prosecution case, the incident in question occurred on 1st February 2020 at about 1.00 p.m. when one Mukesh Sharma, who was working as a salesman in a medical store, was present in the shop. At the relevant time, his colleague had gone out for lunch. An unknown person, whose face was allegedly covered, wearing a blue-sleeved shirt and blue jeans, entered the shop and fired a shot from a country-made firearm. Though the bullet missed the complainant, it shattered the glass panel of the shop, due to which the complainant suffered minor injuries from the splinters. Upon hearing the gunshot, the complainant and his colleague Pawan ran inside to save themselves, whereas one Sajan ran outside in panic. Due to the fear created by the firing, the nearby shopkeepers downed their shutters. It is alleged that an envelope was found at the spot, which contained a threatening message bearing the name of gangster Uday Pathak.

3. It is the case of the prosecution that the present applicant, who allegedly managed an unauthorised parking lot, had, as per instructions received from Uday Pathak, convened meetings with other co-accused and had communicated to them their respective roles in furtherance of the larger conspiracy. Furthermore, accused No.6, one Santosh Sharma, is alleged to have supplied arms and ammunition to the applicant. In order to test the functionality of the said arms, the applicant is alleged to have fired a test shot within the parking premises.

4. Learned counsel appearing for the applicant has strenuously urged that the material on record, even if taken at face value, does not prima facie indicate the applicant's direct involvement in the actual commission of the offence. He submitted that the role attributed to the applicant is at best limited to having allegedly conducted a reconnaissance of the area prior to the incident, which by itself does not establish participation in the offence punishable under Section 307 of the IPC or under the MCOC Act. By placing reliance on the orders passed by this Hon'ble Court in Criminal Bail Application Nos. 554 of 2024 and 1755 of 2020, it is submitted that the case of the present applicant stands on a better footing than those accused who have already been granted bail, and hence, the applicant is entitled to the benefit of parity.

5. It is further submitted that the applicant has been continuously in custody since 10th February 2020. Despite the passage of more than four years, there is no substantial progress in the trial. The learned Advocate has placed reliance upon the judgment of the Hon'ble Supreme Court in *Union of India vs. K.A. Najeer*, (Criminal Appeal No. 98 of 2021), wherein it has been held that where the trial is not likely to conclude within a reasonable period and the accused has undergone a significant period of incarceration, the rigours of special enactments such as UAPA or MCOCA cannot be stretched to defeat the constitutional protection under Article 21 of the Constitution of India. Further reliance was placed on the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Satender Kumar Antil vs. Central Bureau of Investigation & Anr.*, 2022 LiveLaw (SC) 577, laying

down guiding principles for grant of bail, particularly in the context of delay in conclusion of trial.

6. It is submitted that in the present case, the applicant is facing trial under a special enactment, but has been languishing in custody for a prolonged period with no fault attributable to him. The prosecution has cited as many as 53 witnesses, *the witness examination has not yet commenced and trial is still at the stage of Section 294 of CrPC*. In view of the voluminous nature of the charge-sheet and the number of accused involved, the likelihood of early conclusion of trial is bleak. In these circumstances, it is prayed that the applicant be released on bail by imposing appropriate conditions, on the ground of inordinate delay and in order to uphold the fundamental right guaranteed under Article 21 of the Constitution of India.

7. Per contra, the learned Additional Public Prosecutor appearing for the State vehemently opposed the grant of bail to the applicant. It was submitted that the applicant is not a mere participant but is, in fact, playing a vital and pivotal role in the functioning of the gang headed by the notorious gangster Uday Phatak. It was urged that, in view of the incarceration of the gang leader Uday Phatak, the applicant has assumed an active leadership role and has been managing and directing the operations of the gang in furtherance of its unlawful objectives. The gang, including the present applicant, has been involved in activities aimed at asserting their dominance in the Kurar Village area through acts of terror and extortion. The learned APP contended that the role of the applicant in the broader conspiracy

is well established and substantiated by the statements of prosecution witnesses, which clearly reveal that the applicant had accompanied co-accused Santosh a day prior to the incident to carry out a reconnaissance (recce) of the spot where the offence subsequently took place.

8. It was specifically submitted that while conducting recce, co-accused Santosh had disclosed to the applicant that, as per the instructions of gang leader Uday Phatak, the target was to eliminate the intended victim, who was allegedly responsible for the murder of Uday Phatak's younger brother. Thus, the presence and conduct of the applicant during the recce make it evident that he was an active conspirator and privy to the larger plan of the gang to commit the offence in question.

9. Further, the learned APP pointed out *that no Test Identification Parade of the present applicant was conducted during the course of investigation*. In addition, three independent witnesses have categorically stated that the applicant is a known associate of the gang and is actively involved in spreading fear and enforcing the gang's dominance in the locality. These witnesses have also stated that the applicant, along with co-accused Santosh, had threatened them with dire consequences, thereby confirming the applicant's role in the intimidation and coercion strategy of the gang.

10. The prosecution also relied upon the confessional statement of co-accused Santosh, recorded under Section 18 of the Maharashtra Control of Organised Crime Act, 1999, wherein it has

been specifically stated that the firearm used in the commission of the offence was supplied to him by the present applicant. It was further submitted that the said weapon was recovered at the instance of Santosh, thereby lending credence to the allegations against the applicant. Moreover, the applicant is stated to have ten prior criminal antecedents, including cases involving serious offences such as hurt and unlawful assembly, and most of the said offences are in connection with gang-related activities. These antecedents, according to the prosecution, establish a pattern of conduct consistent with the applicant's deep-rooted association with the organised crime syndicate.

11. The learned APP further distinguished the applicant's case from that of another co-accused who had been granted bail by a Co-ordinate Bench of this Court. It was submitted that the role of the said accused was limited to attending phone calls and facilitating financial arrangements for procurement of weapons, whereas, in stark contrast, the present applicant has been attributed with an overt act of supplying firearms and participating in the premeditated conspiracy to commit the offence. The Co-ordinate Bench had granted relief in that case only after recording the prosecution's submission that there was no material indicating active involvement or participation of that accused in the organised crime syndicate. Therefore, it was argued that the plea of parity is not available to the applicant.

12. On the issue of delay in trial, it was contended that the prosecution cannot be faulted for the same, as the delay has occurred on account of multiple applications filed by the prime

accused Uday Phatak before the Special Court, thereby stalling the progress of trial. The learned APP invited attention to the order dated 7th October 2024, placed on record below Exhibit 141, to point out that the charges have been framed as recently as on 24th June 2024, and the trial has now commenced. Thus, the argument of inordinate delay is unfounded in the present context.

13. It was lastly submitted that the applicant has failed to satisfy the twin conditions under Section 21(4) of the MCOC Act, particularly in view of the material indicating his active and continuous involvement in the organised crime syndicate. Considering the nature and gravity of the allegations, the role attributed to the applicant, his prior criminal antecedents, and the likelihood of him indulging in similar offences if released on bail, the learned APP prayed for rejection of the present application.

14. I have carefully considered the rival submissions advanced on behalf of the learned counsel for the applicant and the learned APP for the State. I have also perused the material placed on record, including the charge-sheet, statements of witnesses, confessional statement recorded under Section 18 of the MCOC Act, and the order framing charges by the Special Court.

15. At the outset, it is pertinent to note that the prosecution has invoked stringent provisions of the Maharashtra Control of Organised Crime Act, 1999. The applicability of MCOC has not been challenged by the applicant before this Court. It is alleged that the present applicant is an active member of an organised crime syndicate headed by one Uday Phatak, and during his

incarceration, the applicant has been allegedly managing the affairs and operations of the gang in Kurar Village, Mumbai.

16. The specific role attributed to the present applicant, as is prima facie revealed from the material collected during the course of investigation, is not peripheral or incidental but is central to the planning and orchestration of the offence. The statements of material witnesses categorically state that the applicant had accompanied co-accused Santosh Sharma on the previous day of the incident to conduct reconnaissance (recce) of the location where the crime was to be executed. This recce was not a casual visit but was undertaken with the clear objective of surveying the area and chalking out the manner in which the attack was to be carried out.

17. It is further alleged that, during the said reconnaissance, co-accused Santosh Sharma had openly informed the applicant that the target was to eliminate the complainant, who was allegedly responsible for the murder of Uday Phatak's younger brother. This disclosure, made in the presence of the applicant, indicates that the applicant was fully aware of the motive behind the planned attack and had consciously participated in the preparations to execute it.

18. What adds further weight to the prosecution's case is the material suggesting that even prior to the actual incident, more particularly on 5th December 2025, the applicant, along with co-accused Santosh, had convened a meeting with other members of the gang. In this meeting, the applicant and Santosh are alleged to

have specifically instructed the co-accused persons regarding the manner in which the firing was to be executed on the shop owner. This planning, in the presence and with the active participation of the applicant, demonstrates a clear meeting of minds and reflects that the applicant was a part of the unlawful design to carry out the criminal act.

19. If the aforesaid sequence of events and the attendant circumstances are taken at face value at this stage, which is permissible while deciding an application for bail, then there appears to be strong prima facie material to infer that the applicant was not only aware of the conspiracy but was also a willing participant therein. His active involvement in the recce operation, presence during preparatory meetings, and instructions given to co-accused go beyond mere association and squarely bring him within the fold of Section 120B of the IPC (criminal conspiracy) read with Section 307 (attempt to murder).

20. More importantly, when viewed through the lens of the Maharashtra Control of Organised Crime Act, 1999, particularly Sections 3(2) and 3(4), the acts attributed to the applicant reflect his continued engagement in activities of an organised crime syndicate. Section 3(2) punishes any person who conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime. Section 3(4) further makes it punishable for a person who is a member of an organised crime syndicate. The material, in the form of witness statements and the role of the applicant in facilitating the execution of the offence, satisfies both these limbs.

21. It is now well settled that at the stage of bail, the Court is not required to conduct a detailed dissection of evidence, but must ascertain whether a strong prima facie case exists to suggest involvement of the accused in the offence. In the present case, the overt acts attributed to the applicant, coupled with his pre-offence conduct, sufficiently disclose the applicant's complicity in the commission of a grave offence carried out by a criminal gang operating in an organised manner. The nature of allegations, the manner in which the applicant has allegedly contributed to the offence, and the attending circumstances disentitle the applicant from being enlarged on bail.

22. The act of conducting recce of the spot, in furtherance of such an unlawful design, assumes critical relevance in establishing the applicant's knowledge of the object of the conspiracy and his active role in its execution. At this stage, the Court is not required to record a finding of guilt, but only to assess the existence of prima facie material indicating involvement in the crime. The act of recce is not a casual or neutral occurrence, it is a preparatory act which in itself signifies the applicant's alignment with the common intention of the conspirators. It may be observed that in a criminal conspiracy, physical participation in the actual assault is not necessary. What is of essence is the existence of a meeting of minds to achieve a common unlawful object. The Apex Court in *State (NCT of Delhi) v. Navjot Sandhu* [(2005) 11 SCC 600], has held that conspiracy is hatched in secrecy and direct evidence may not always be available; even circumstantial evidence can be sufficient to establish participation in the conspiracy.

23. Therefore, the material placed on record, including the statement of Santosh and the other witnesses, if taken at face value, prima facie indicates that the applicant was aware of the purpose of the recce and was not merely an unwitting companion. His involvement in planning on 5.12.2020, coupled with the knowledge that the complainant was to be targeted at the behest of the gang leader, constitutes active participation in the conspiracy. This, in turn, attracts culpability under Section 120B read with Section 307 of the Indian Penal Code, 1860.

24. Furthermore, considering the backdrop in which the offence was committed, wherein a gang sought to assert its supremacy and retaliate for the earlier murder of its member, the offence squarely falls within the ambit of organised crime as defined under Section 2(1)(e) read with Section 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999. The act of conducting recce is part of a larger design to execute an offence punishable under Chapter XVI of the IPC with the intent to promote the gang's objectives and its unlawful activities. In *Zahoor Ahmad Shah Watali v. NIA* [(2019) 5 SCC 1], the Supreme Court emphasised that at the stage of bail in special statutes, the test is whether the material on record, if unrebutted, would establish the accusation. Applying the said test, the involvement of the applicant in the present case cannot be lightly brushed aside.

25. Hence, the prima facie material on record unmistakably suggests that the applicant was not a passive bystander but was consciously and wilfully participating in the planning of a grave and targeted attack, which formed part of the broader organised

crime activities of the gang. Such involvement militates against the grant of bail at this stage.

26. In the present case, the applicant was identified by witnesses who had observed him in connection with the recce and other preparatory acts. The identification of the applicant in the TIP lends independent support to the statements of witnesses and corroborates the prosecution's version that the applicant was not only present with co-accused Santosh during the planning stage but also played an integral role in advancing the gang's unlawful design.

27. Further, the prosecution has placed on record statements of at least three independent witnesses who have categorically deposed to the effect that the applicant, in association with co-accused Santosh and others, was actively involved in creating an atmosphere of fear and asserting the supremacy of the gang in the Kurar Village area. These witnesses have not only identified the applicant as a known member of the syndicate but have also described incidents wherein the applicant and his associates had issued threats and engaged in acts of intimidation.

28. The pattern of behaviour, as revealed from these consistent witness statements, demonstrates that the applicant was not a one-time participant in the incident in question, but has been continuously involved in the gang's activities aimed at instilling fear, extracting extortion, and asserting unlawful dominance in the locality. The conduct described by the witnesses is in the nature of continuing unlawful activity under Section 2(1)(d) of the MCOC

Act, which defines such activity to include more than one charge-sheeted offence committed for the purpose of pecuniary gain or other advantage for the gang.

29. The conduct attributed to the applicant satisfies the conditions laid down under Section 2(1)(e) and 2(1)(f) of the MCOC Act, thereby bringing the applicant's actions squarely within the definition of organised crime and organised crime syndicate respectively.

30. It further emerges from the record that the applicant has ten prior criminal cases registered against him. These include offences involving bodily harm and offences committed in association with known members of the crime syndicate. The pattern of antecedents, nature of the charges, and their continuity over a period of time reflect the applicant's habitual association with organised criminal activity.

31. While mere registration of cases may not be conclusive, in the present case, they must be viewed in the context of the applicant's alleged role within the gang structure and the consistency of conduct reflected in the present matter. The antecedents must be considered cumulatively along with present accusations, especially in cases under special statutes like MCOC, where the concern is not only commission of isolated offence, but the continuity of criminal conduct.

32. The applicant's antecedents, coupled with the material in the present case, raise a reasonable apprehension that if released on bail, he is likely to indulge in similar acts, thereby jeopardising

public order and the course of justice.

33. As regards the plea of parity raised by the applicant, this Court is not persuaded to accept the same. It is well settled that parity is not to be applied in a mechanical manner, especially when the role attributed to the accused seeking bail is distinct and graver in nature. The Co-ordinate Bench of this Court, while granting bail to the co-accused, had clearly recorded that the said accused was not involved in any overt act and had merely facilitated the transaction over phone. The prosecution itself did not attribute to him any role indicative of his involvement in planning or executing the offence.

34. On the other hand, the present applicant, as noted above, has been implicated in active surveillance (recce), has been identified in TIP, has criminal antecedents, and has been implicated by independent witnesses as a member of the crime syndicate actively spreading terror. Therefore, the principle of parity is not attracted in the facts and circumstances of the present case. The bail cannot be granted solely on the basis of parity when there is material to distinguish the roles of the accused.

35. Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act), imposes stringent conditions which must be satisfied before an accused can be released on bail. The said provision requires the Court to be satisfied, firstly, that there are reasonable grounds for believing that the accused is not guilty of such offence, and secondly, that he is not likely to commit any offence while on bail. These are conjunctive conditions, and both

must be fulfilled before bail can be granted.

36. In the present case, having regard to the nature of the allegations, the material on record including witness statements, the applicant's presence during the recce along with co-accused Santosh, and the repeated pattern of criminal conduct reflected from his antecedents, this Court is unable to record a finding, even prima facie, that there are reasonable grounds for believing that the applicant is not guilty. On the contrary, the material reveals the applicant's continuing association with the organised crime syndicate and his participation in the offence committed in furtherance of the gang's objective.

37. The second limb of Section 21(4), i.e., the likelihood of the accused committing an offence while on bail, also cannot be answered in favour of the applicant. The past criminal history of the applicant, including multiple serious offences involving violence and intimidation, creates a reasonable apprehension that if enlarged on bail, the applicant may again indulge in similar offences or attempt to interfere with the prosecution witnesses, particularly when some of them belong to the same locality where the gang is alleged to be asserting its dominance.

38. The Supreme Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* [(2005) 5 SCC 294], while interpreting Section 21(4) of the MCOC Act, held that satisfaction of both conditions is mandatory and that the Court must give reasons on the basis of material on record. In the facts at hand, both conditions stand unfulfilled. Consequently, the applicant does not

meet the threshold required under Section 21(4) of the MCOC Act for grant of bail.

39. It was also urged on behalf of the applicant that he has been in custody since 10th February 2020 and that the delay in conclusion of trial constitutes a violation of his right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The right to speedy trial is indeed a component of Article 21.

40. In the present case, though the applicant has been in custody for over four years, the record discloses that charges were framed recently on 24th June 2024 and the trial has now commenced. The delay is not solely attributable to the prosecution. Rather, it is pointed out that multiple applications have been filed by the principal accused which have contributed to the delay. *The witness examination has not yet commenced and trial is still at the stage of Section 294 of CrPC.* Therefore, the Court does not find that the applicant's incarceration, in the circumstances of the present case, constitutes a violation of his constitutional rights warranting release at this stage.

41. The MCOC Act was enacted with the express object of combating the menace of organised crime and ensuring the safety and security of society. In balancing the competing interests between individual liberty and societal interest, the Court is bound to adopt a cautious and calibrated approach. In the present case, the interest of justice, public order, and the seriousness of the charges weigh heavily against the grant of bail.

42. Upon cumulative consideration of the submissions advanced by both sides and perusal of the material on record, this Court finds that:

(i) The applicant's *prima facie* involvement in the offence is established through his participation in the reconnaissance conducted with co-accused Santosh Sharma, with knowledge of the conspiracy to commit an offence at the behest of gang leader Uday Phatak.

(ii) *No Test Identification Parade of the present applicant was conducted during the course of investigation*, and independent witnesses have implicated him in acts of intimidation and perpetuation of gang dominance in the Kurar Village area.

(iii) The applicant has ten prior criminal antecedents, which indicate a sustained association with organised criminal activity.

(iv) The conditions prescribed under Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999, are not satisfied, as this Court is unable to form an opinion that the applicant is not guilty of the offence or that he is unlikely to commit similar offences if released on bail.

(v) The delay in the trial is not attributable solely to the prosecution. Charges have now been framed and the trial is underway. Hence, the ground of delay cannot be a determinative factor for grant of bail under the facts of the present case.

(vi) The plea of parity is not applicable, as the role of the applicant is distinct and graver than that of the co-accused who has been granted bail.

43. Considering the serious nature of the allegations, the *prima facie* evidence indicating the applicant's active role in the commission of the organised crime, and the statutory bar contained under Section 21(4) of the MCOC Act, this Court is of the considered view that the present case is not a fit one for grant of bail.

44. Bail Application stands rejected.

45. It is clarified that the observations made hereinabove are confined to the adjudication of the present bail application and shall not influence the trial Court while appreciating the evidence at the stage of trial.

(AMIT BORKAR, J.)

Note:- This order is modified as per the order dated 1 August 2025. Corrections are shown in italicize.