

Nikita

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

BAIL APPLICATION NO.492 OF 2025

Nikhil Dilip Balwadkar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Ms. Pushpa Ganediwala a/w Mr. Onkar Bajaj Advocates
for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

Mr. Manoj Mohite, Senior Advocate a/w Ms. Ilsa Shaikh
Advocates for the Respondent No.2.

Mr. Ajay Yadavrao Lohekar, PSI, Shirgaon Parandwadi
Police Station, Pimpri Chinchawad.

CORAM : ASHWIN D. BHOBE, J.

DATED : 5th AUGUST, 2025

P.C.:

1. Applicant, by the present application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, is seeking bail in connection with C. R. No. 96 of 2023 registered on 02.04.2023 with Shirgaon Parandwadi Police Station for the offences punishable under Sections 302, 34, 120 (B), 201, 109, 212 of the Indian Penal Code, 1860 and Sections 3(1)(i)(ii), 3(2), 3(3), 3(4) of Maharashtra Control of Organized Crime Act, 1999 and Section 135 of the Maharashtra Police Act, 1951 and Sections 4 and 27 of the Arms Act, 1959.

2. There are eight Accused persons in the present crime. Four are named in the FIR.
3. Upon investigation, charge-sheet was filed before the Court of Special Judge under MCOC Act, Pune. Said proceedings are registered as Special MCOC Case No.964 of 2023.
4. Applicant is Accused No.6 in the present crime.
5. FIR was registered on the basis of complaint lodged by the Ravindra Sahebrao Gopale (brother of the deceased). Case of the prosecution is that Pravin Sahebrao Gopale (deceased) was elected unopposed for the post of Sarpanch at Shirgoan. Amol Appasaheb Gopale (Accused No.1) wanted the said post of Sarpanch, as a result, there was political rivalry between them. In 2013-14, there were numerous farmhouses built in land bearing Gat No.166, near Sai Mandir and sold to various individuals. In the year 2018, Mahesh Begade (Accused No.9), Ashok Laxman Kamble (Accused No.10) and Manish Ahode (Accused No.11) were harassing the persons living on the said plot by pasting eviction notices on their doors. Deceased Pravin being Sarpanch, was advising and guiding said affected people, which was not liked by the said accused persons. Deceased Pravin and his brother started receiving threats from Accused No.1, Accused No.11 and Accused No.10. On 01.04.2023, while the deceased Pravin was sitting in front of Shirdi Saibaba Temple on his Activa bearing No. MH14FD0080, the accused persons assaulted him with a sharp and deadly weapon like koyata on his face and head, with an intention to kill him. Deceased Pravin succumbed to the injuries.

6. Accused was arrested on 09.08.2023. Bail Application filed by the Applicant in Special MCOC Case No.964 of 2023 was rejected by the Special Judge under MCOC Act, Pune.

7. Heard Ms. Pushpa Ganediwala, learned Advocate for the Applicant, Mr. P. H. Gaikwad, learned APP for the State and Mr. Manoj Mohite, Senior Advocate, learned Advocate for the Respondent No.2. In addition to oral arguments, learned Advocates have filed brief written submissions.

8. Ms. Pushpa Ganediwala, learned Advocate for the Applicant submits that the role attributed to the present Applicant is that the Applicant at the behest of Amar @ Santosh Ozarkar (Accused No.8), helped the co-accused for purchasing new clothes and getting a rented car for them to reach Kem, Dist-Solapur. She submits that there is no direct phone call between the Applicant and the other Accused before or after incident, except call made to Accused No.8 after the incident. She submits that there is no material on record to show the involvement of the Applicant in the conspiracy. She submits that the Applicant was neither acquainted with the gang leader i.e. Accused No.2 nor with the other co-accused except Accused Nos.1 and 8 who are his relatives. She submits that the Applicant has never been a member any organized crime syndicate. She submits that offence of harbouring as defined under Section 3(3) of the MCOC Act is not applicable. She submits that the mens rea is an essential element for any crime. She submits that there is nothing in the charge-sheet to show mens-rea. She submits that there is absolutely nothing in the charge-sheet about Applicant's nexus neither with the co-accused who are

members of the organized crime syndicate nor with the alleged crime. She submits that there is no commonality with the present crime and the two earlier crimes wherein Accused No.2 is one of the Accused. She submits that there is no case made out to attract provisions of MCOCA and therefore rigours of Section 21(4) or 21(5) of the MCOC Act would not apply. She submits that there is delay in trial. She relies on the following judgments:

- 1) Surjitsingh Bhagatsingh Gambhir Vs. State of Maharashtra & Ors.¹
- 2) State of Maharashtra Vs. Bharat Shantilal Shah & Ors.²
- 3) Kalpnath Rai Vs. State (Through CBI).³
- 4) Maruti Navnath Sonawane Vs. State of Maharashtra.⁴
- 5) Kavitha Lankesh Vs. State of Karnataka⁵

9. Mr. P. H. Gaikwad, learned APP for the State submits that the Applicant has assisted the other Accused in committing murder of deceased Pravin. He submits that the Applicant has rendered actual assistance to the Accused who are the members of the organized crime syndicate. He submits that the Applicant has by provided shelter food and transport to the assailants to flee after commission of the offence, despite the Applicant having knowledge of the assailants committing murder. He submits that Accused No.1 has formed an organized crime syndicate with other Accused which includes the Applicant. He submits that the proposal dated

1 2019 SCC OnLine Bom 1860

2 (2008) 13 SCC 5

3 (1997) 8 SCC 732

4Cri, Appeal No.198 of 2022, dated 04.05.2022

5 (2022) 12 SCC 753

12.08.2023 was sent to the Additional Commissioner of Police for applying the provisions of MCOC Act against the Accused in the present crime, which was accorded necessary sanction on 23.09.2023. In support of his contention, he relies on the following judgments:

- 1) Govind Sakharam Ubhe Vs. The State of Maharashtra⁶
- 2) Abhishekh Vs. The State of Maharashtra & Ors.⁷
- 3) The State of Maharashtra Vs. Vishwanath Maranna Shetty⁸
- 4) Kavitha Lankesh Vs. The State of Karnataka & Ors.
- 5) Zakir Abdul Mirajkar Vs. The State of Maharashtra & Ors.⁹
- 6) Sachin Bansilal Ghaiwal Vs. The State of Maharashtra¹⁰
- 7) Sunil Ashok Kondugale Vs. The State of Maharashtra¹¹
- 8) Babu Ohundappa @ Arjun Chintale Vs. The State of Maharashtra¹²
- 9) Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli)¹³
- 10) Vivek Chandrakant Manjrekar Vs. The State of

6 2009 SCC OnLine Bom 770

7 AIR 2022 S.C.F. 2488

8 2012 10 SCC 561

9 2022 SCC OnLine SC 1092

10 2014 Cri. L. J. 4217

11 2024 SCC OnLine Bom.1227

12 Bail Application No.3312 of 2024 dated 25.07.2025

13AIR 2021 SC 2011

Maharashtra¹⁴

10. Mr. Manoj Mohite, learned Senior Advocate for the Applicant submits that deceased Pravin was brutally murdered by Accused Nos.2, 3 and 4, pursuant to conspiracy hatched by main conspirator, Accused No.1 due to political rivalry. He submits that after the murder of deceased Pravin, Accused Nos.2, 3 and 4 fled from the spot and thereafter, Accused No.8 contacted the Applicant for assisting in their escape by arranging transportation and destroying their blood stained clothes. He submits that pursuant to the said call at about 4.16 am, Applicant picked up the assailants from Pune in a Maruti Swift Car, drove them all the way from Pune to Kapurhol Taluka Bhore, during the said period, the clothes of the Accused persons were covered in blood, car in which they were traveling is captured in the video footage at the toll naka. He submits that the Applicant played a key role in harbouring the main assailants by contacting his friend Milind Jagtap to arrange new clothes and later organizing their transport to Solapur. He submits that Applicant harboured the assailants and disposed off the blood stained clothes. He submits that Accused No.1 hatched the conspiracy and executed the plan to murder deceased Pravin. He submits that the Applicant is the first cousin of Accused No.1 who has actively conspired with him and the other Accused as also assisted in their escape and aided in destroying the blood stained clothes. He submits that the evidence clearly indicates Applicant being a member of the organized crime syndicate has harboured and attempted to conceal the assailants and thus committed the

14Bail Application No.868 of 2022

offence under Section 3(3) of the MCOC Act. He relies on the following decisions.

- 1) Govind Sakharam Ubhe Vs. State of Maharashtra.
- 2) Rajendra Bhau Patole Vs. State of Maharashtra¹⁵
- 3) State of Maharashtra Vs. Vishwanath Maranna Shetty

11. I have perused the record with the able assistance of learned Advocates for the parties.

12. Perusal of the records indicate that the offence was committed on 01.04.2023 at about 9.30 pm. Accused No.8 contacted Applicant on 02.04.2023 at 4.16 am. Applicant is alleged to have assisted the assailants (Accused Nos. 2, 3 and 4). Initially, the Applicant took the assailants in his Swift car to his friend Milind Jagtap. During the said time, the assailants were wearing the blood stained clothes. Milind Jagtap requested his friend Pradeep Pingare to open shop and provide new clothes to the assailants. New clothes for the assailants were purchased from the shop of Pradeep Pingare who opened his shop at 6.30 am, amount towards the purchase was paid by the Applicant. Thereafter, Applicant requested Milind Jagtap to arrange for a car to drop the assailant to Kem Solapur. Applicant paid the rental of the car which car was arranged for dropping the assailants to Solapur. Applicant contacted Accused No.7 on phone of Sachin Maruti and instructed Accused No.7 to coordinate with the assailants, once they reach the destination. Applicant is identified in the Test Identification Parade as the person involved in the crime. There is material to that effect

¹⁵Cri. W.P. No. 3812 of 2021

brought on record by the Investigation Agency.

13. Ms. Pushpa Ganediwala, learned Advocate for the Applicant made an attempt to persuade this Court by submitting that there is nothing in the charge-sheet about Applicant's nexus either with the co-accused who are members of organized crime syndicate or alleged crime as according to her Applicant came in picture after the incident. I am unable to accept the said contention of Ms. Pushpa Ganediwala, as Accused No.8 was in contact with the main conspirator Accused No.1. Communication of Accused No.8 with the Applicant immediately after the crime completes the chain of event and the Applicant was indeed part of the conspiracy and had full knowledge of it. Applicant has harboured and attempted to conceal the assailants who are members of the organized crime. Records indicate that the Applicant has not only assisted the assailants in fleeing away by using his own vehicle i.e. Swift car but further provided food and clothes to the assailants and also assisted them to destroy the evidence, having full knowledge that the assailants were involved in the offence of murder. *Prima facie* it cannot be believed that the Applicant had no knowledge of the assailants having committed the crime.

14. Respondent State in their affidavit in paragraph No.18 and 19 has made the following statements:

18.I say that the present applicant / accused is the gang member and has past criminal antecedents. The details of the same are as under:

Sr. No.	Police Station	CR No.	Under Section	Status of cases
1	Chaturshringi	1085/2	223, 324, 506, 141, 143, 148,	Court pending

		019	149 of IPC	vide RCC No.1802 of 2020
2	Shergaon Parendwadi	96/2023	Sec. 302,120(B),201, 109, 212, 34 of the Indian Penal Code and Sec.4(27) of the Indian Arms and under Sec. 7 of Criminal Law Amendment Act, Sec. 37(1)(3) r/w section 135 of Maharashtra Police Act and under section 3 (1) (i) (ii), 3(2),3(3), 3(4) of the M.C.O.C.Act 1999	Present offence

19.I say that the Accused Vishal Sunil Gaikwad formed Organized Crime Syndicate, the antecedent record is as follows:

Sr. No.	Police Station	C.R. No.	Sections
1	Wadgaon Maval	189/2017	Sec. 399, 402, 332, of the Indian Penal Code and Sec. 4(27) of the Indian Arms Act
2	Talegaon Dabhade	276/2022	Sec. 395 of the Indian Penal Code and Sec. 7 of Criminal Law Amendment Act
3	Shirgaon Parendwadi	96/2023	Sec.302,120(B),201, 109,212, 34 of the Indian Penal Code and Sec.4(27) of the Indian Arms and under Sec. 7 of Criminal Law Amendment Act, Sec. 37(1)(3) r/w section 135 of Maharashtra Police Act and under section 3 (1) (i) (ii), 3(2),3(3), 3(4) of the M.C.O.C.Act 1999

15. In the case of Zakir Abdul Mirajkar (supra) the Hon'ble Supreme Court in paragraph No.89 has observed as under:

“89. Other Courts, too, have held that persons who are alleged to be members of an organised crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. Rather, charge-sheets with respect to the organised crime syndicate are sufficient to fulfil the condition in Section 2(1)(d).”

16. In the case of Sachin Bansilal Ghaiwal (supra), the Hon'ble

Division Bench of this Court in paragraph No.38 and 39 has observed as follows:

“38. Thus, according to us and in our humble opinion and after giving our earnest consideration, the expression 'member' as has been termed in Section 2(1)(d) of the MCOC Act can be interpreted and defined as, a person who participates in the crime either actively or passively or a person who facilitates the commission of the crime committed by the organized crime syndicate or on behalf of the organized crime syndicate, automatically becomes the member of the said crime syndicate which commits the offence or on whose behalf the offence in question is committed, as contemplated under Sec. 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act.

39. The said intention of the legislature can further be gathered from the expression which is used in sub section (2) of Section 3 of the MCOC Act i.e. "any act preparatory to organised crime" has direct bearing with the expression 'member' which appears in Section 2(1)(d) of the MCOC Act and therefore taking into consideration the intention of the legislature, widest possible meaning has to be given to the expression 'member' as is appearing in Sections 2(1)(d), 2(1)(e), Section 3 and other provisions of the MCOC Act.

(emphasis supplied)”

17. In the case of Rajendra Bhau Patole (Supra) the division bench of this Court in paragraph No.17, 18 and 19 observed as follows:

“ 17. The law on the point of invocation of MCOC is well settled This Act is enacted to prevent and control an organized crime. Organized crime is different from regular crime. If for gaining pecuniary benefits, economic/other advantage unlawful activity is continued it is an organized crime. It must be undertaken on behalf of the organized crime syndicate. It means if there is crime syndicate and they are involved in criminal activity and it has become their source of livelihood, it attracts the provisions of stringent MCOC Act. Normal criminal law is not sufficient to control the activities.

18. It is not necessary that every time same set of criminals

will commit that offence. There may be new accused or combination of old and new participants. What is important is all these offences are connected through the web of organized crime syndicate. On this background, if we see the previous offences, we may be find that the gang leader accused Shankar Dashrath Salve is arrested. There is combination of different accused. Accused Shankar Dashrath Salve is involved in present offence. Present Petitioner assisted the arrested accused in committing the offence. Helping them to run, to take shelter attracts invocation of Indian Penal Code. In that manner Petitioner has become member of that crime syndicate.

19. After considering the ratios laid down in above referred judgements, we do not feel that the action of the police in showing the Petitioner as wanted accused does amount to abuse of the process of the Court. It is for the reason that the investigation so far carried out suggest the involvement of the Petitioner. It is not always necessary that every accused must be present on the spot. There are various circumstances in the chain of circumstances. In that chain, it may happen that set of accused persons may be present at the spot, some of the accused have played a role prior to commission of offence and some of them have participated post commission of offence. Materials shown to us do suggest involvement of the Petitioner in helping the assailants in different manners.”

18. In the case of Vishawanath Maranna Shetty (Supra), the Hon’ble Supreme Court in paragraph No.29 has observed as follows:

“29. While dealing with a special statute like Mcoca, having regard to the provisions contained in sub-section (4) of Section 21 of this 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 organised 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. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under Mcoca, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of Mcoca that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under Mcoca."

19. Additional Director General of Police and Commissioner of Police, Pimpri after considering the material on record has granted sanction under Section 23(2) of the MCOC Act 1999. Though, Ms. Pushpa Ganediwala, made an attempt to point out flaws in the said sanction order dated 27.09.2023, she fairly submits that any person aggrieved by such sanction order is entitled to question the said report. She submits that till date the Applicant has not questioned the said sanction order.

20. This Court in its order dated 30.08.2024 passed in Criminal Bail Application No.819 of 2024, has given reasons for granting bail to Accused No.8. Ms. Pushpa Ganediwala submits that the Applicant is entitled to parity. Prosecution has brought on record the positive involvement of the Applicant in the present crime which indicates the Applicant's support to the other Accused which includes the Gang Leader, as such I am unable to accept the contention of Ms. Pushpa Ganediwala that the Applicant is entitled to bail on the ground of parity.

21. Offence which is charged in the present crime is of a serious nature i.e. a brutal murder of deceased Pravin. *Prima facie*, evidence brought on record by the prosecution is sufficient to constitute an offence under Section 302, 120(B), 201, 109, 202 read with 34 of IPC, Arms Act and MCOC Act, as well the positive involvement of the Applicant in the present in the present crime.

22. Section 21(4) of the MCOC Act prohibits grant of bail in such situation. Considering the gravity of the offence no case is made out for grant of bail.

23. Bail Application is therefore dismissed.

(ASHWIN D. BHOBE. J.)