**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (BA) NO.101 OF 2025

Devansh Ajay Sharma
Vs.
The State of Maharashtra, through Police Station Officer, Police Station, MIDC, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mrs. B.P. Maldhure, Counsel for the applicant.
Mr. D.V. Chauhan, PP and Senior Advocate assisted by Mr. N.B. Jawade, APP for the non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/03/2025

1. The applicant came to be arrested in connection with Crime No.831/2023 registered with M.I.D.C. Police Station District Nagpur for the offences punishable under Sections 302, 307, 120-B, 201, 143, 144, 147, 148 and 149 of the Indian Penal Code (for short, 'I.P.C.') and under Sections 4, 25 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (for short, 'MCOC Act').

2. The crime is registered on the basis of the report lodged by Ravi Jaiswal alleging that on 16/08/2023 at about 8.30 p.m. he alongwith deceased Rakesh Mishra had gone to one Panstall, situated at Rajiv Nagar Main Road, at about 9.00 to

9.30 p.m. One Arjun Dandekar along with 4-5 persons came and assaulted deceased Rakesh Mishra and informant by means of sword and thereafter fled away. It is further alleged that on account of previous dispute of Rakesh Mishra and the employer of the other co-accused, hatched a conspiracy and hired other co-accused and eliminated the deceased. On the basis of the said report, police have registered the crime against the present applicant and other co accused. During investigation it revealed that Ganesh Dandekar is the gang leader and the present applicant is a member of the organised crime syndicate and in furtherance of that organised crime, he committed the offence. Therefore, the approval was obtained in view of Section 23(1) of the MCOC Act and sanction was also subsequently obtained in view of Section 23(2) of the MCOC Act.

3. Learned counsel, Mrs. B.P. Maldhure, for the applicant, submitted that as far as the present applicant is concerned, his name is not mentioned in the FIR. He has no criminal antecedents to show that by committing the offence he has either received any peculiar gain. He has no connection with the other members of the organised crime syndicate. She submitted that merely on the basis of one memorandum statement of the present applicant and at his instance the clothes of other co-accused are seized. Therefore, he is implicated in the alleged offence. The TI parade on which the prosecution is

relying upon, is rather delayed and therefore, material which is collected during the investigation is not sufficient to show his involvement along with other members of the organised crime syndicate and therefore, the application deserves to be allowed. She also submitted that there is no direct or indirect material to connect him with members of the organised crime syndicate on record. Therefore, rigor under Section 21(4) of the MCOC Act will not be attracted.

4. Learned PP strongly opposed the said application and submitted that, in view of Section 21(5) of the MCOC Act, the application itself is not maintainable as the previous offence was registered against the present applicant and this is the second offence committed by him. He further submitted that present applicant is also charge-sheeted along with the gang leader of Ganesh Dandekar in Crime No.503/2023 registered at Yavatmal City. Thus, his association with the gang leader is sufficient to show his involvement in the alleged offence. He further submitted that not only the clothes are recovered at his instance but he is also identified during identification parade by the eye witness. Thus at this stage, there is sufficient material to connect the present applicant with the alleged offence.

5. Having heard both sides and on perusal of the investigation papers, as mentioned earlier that the memorandum statement of the present applicant was recorded and at his instance, blood stained clothes of other co-accused are seized or discovered. The applicant was also put up for T.I. parade and eyewitnesses of the said incident have identified him. It further reveals from the investigation papers that he was co-accused along with the leader of the gang Gadesh Dandekar in Crime No.523/2023.

6. To apply the provisions of the MCOC Act, it is necessary to consider the expression "continuing unlawful activity."

7. In view of Section 2(1)(d) of the MCOC Act, activities 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 organised 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.

8. Section 2(1)(f) of the MCOC Act defines "organised 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 organised crime.

9. Thus, the MCOC Act contemplates a situation where a group of persons as members of organised crime syndicate indulge in organised 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 person. These activities, as per the definition of organised crime are continuing unlawful activities prohibited by law. The definition of continuing unlawful activities 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 organised 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.

10. Thus, for an activity to be a `continuing unlawful activity', 1) the activity must be prohibited by law; 2) it must be a cognizable offence punishable with imprisonment of three years or more; 3) it must be undertaken either singly or jointly; 4) it must be undertaken as a member of an organised crime syndicate or on behalf of such syndicate 5) in respect of which more than one charge-sheets have been filed before a competent court.

11. The Maharashtra Control of Organised Crime Act 1999, as its long title indicates, is "an Act to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang and for matters connected therewith or incidental thereto". The Hon'ble Apex Court in the case of ***Zakir Abdul Mirajkar vs. State of Maharashtra***, reported in ***AIR OnLine 2022 SC 1325***, wherein the Hon'ble Apex Court has considered the statement of objects and reasons, contains the reason which constituted the foundation for the legislature to step in and observed that;

> *"Firstly, organised crime which is in existence for some years poses a serious threat to society;*
>
> *Secondly, organised crime is not confined by national boundaries;*
>
> *Thirdly, organised 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 organised crime pose adverse effects on the economy;*
>
> *Fifthly, organised crime syndicates make common cause with terrorists fostering narco terrorism 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 organised 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."*

12. In light of the above, if the facts of the present case are taken into consideration, admittedly, previous offences are registered against the applicant. One offence bearing Crime No.523/2023 shows he is accused and charge-sheeted along with the gang leader and the said offences are committed by the gang leader for extortion and for pecuniary gain. Thus, there is sufficient material to show that the present applicant is associated with the gang leader and the offences are also registered against him.

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

14. Insofar as the rigor under Section 21(4) of the MCOC Act are concerned, the Honourable Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Mah. And anr***, 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 who is required to come to a positive finding that the applicant is not guilty of an organised crime before the grant of bail. On 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 organised crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provision and what is required is the satisfaction that there are reasonable grounds for believing the accused to be not guilty.

15. Learned Counsel for the applicant placed reliance on the orders of this Court in ***Criminal Application No.639/2024 (Ashwin @ Sintu s/o Nagorao Pradhan vs. State of Maharashtra***)

decided on 23.09.2024 and Criminal Application No.843/2024 ***(Shahrukh Alias Kasai Shaikh Akram Vs. State of Maharashtra)*** reported in ***2024 ALL MR (Cri) 1912***. On going through the decisions it reveals that the facts of the cited cases are not identical with the present case.

16. After applying the ratio laid down by the Hon'ble Apex Court and after considering the facts and material collected during the investigation at this stage, the satisfaction that the applicant is not guilty cannot be recorded as there is sufficient material to connect the applicant's association with the other co-accused..

17. In view of that, there are certainly reasonable grounds to show the involvement of the present applicant in the alleged offence.

18. In view of that the application is deserves to be rejected and it is accordingly, rejected.

19. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

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