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

CRIMINAL APPLICATION (BA) NO.246/2025

Pravin Moreshwar Sahare

..vs..

State of Maharashtra, through PSO Sadar, Nagpur

....

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

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Shri G.Gour, Advocate h/f Shri C.B.Barve, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for the State.

CORAM	: URMILA JOSHI-PHALKE, J.
CLOSED ON	: 24/06/2025
PRONOUNCED ON	: 27/06/2025

1. By this application under Section 483 of the BNSS, the applicant seeks regular bail in connection with Crime No.706/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 201, 419, 420, 465, 468, 471, 472, and 489(C) read with 34 of the IPC and 3(1)(ii), 3(2), 3(4), and 4 of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act).

2. The applicant came to be arrested on 15.12.2023 and since then he is in jail.

3. The crime is registered on the basis of a report lodged by Nisha Rajkumar Jaju alleging that she along with her husband purchased a plot from “Kale Land Developers and Builders” at ward No.57, khasra No.139, plot Nos.89/90 admeasuring 3000 square feet, mauza Nara, Nagpur. Her name was mutated and she became owner of the property. In the year 2022-23, when she had been to her Chartered Accountant to file yearly return, she came to know that her plot has been sold for consideration of Rs.35.00 lacs. She also received OnLine copy of her transaction from her Chartered Accountant. To verify the said transaction, she visited the office of the Registrar and came to know that her plot has been sold by impersonating her and, therefore, she approached the police station and lodged the report.

4. After registration of the crime, wheels of

investigation started rotating and the applicant came to be arrested.

5. Heard Advocate Shri G.Gour h/f learned counsel Shri C.B.Barve for the applicant and learned Additional Public Prosecutor Shri N.B.Jawade for the State.

6. Learned counsel for the applicant submitted that the applicant is not at all concerned with the alleged transaction. The investigation papers nowhere show any connection of the applicant with members of the organized crime syndicate. The other co-accused are already released on bail by this court. Thus, on the ground of parity also, the applicant be released on bail. Now, investigation is already completed and chargesheet is already filed. The charges are yet to be framed. The applicant cannot be kept in custody for an indefinite period of time. For all above these grounds, the applicant be released on bail.

7. Learned Additional Public Prosecutor for the State strongly opposed the application and submitted that

association of the applicant with other members of the organized crime syndicate reveals from investigation papers. Though the other co-accused are released on bail, role of the applicant and role of the other co-accused is different. Several offences are registered against the applicant of the similar nature. The said offences are committed for pecuniary gain. The association of the applicant with the other co-accused reveals from investigation papers. Considering all these aspects, the application deserves to be rejected.

8. Before going into the controversy involved in the present application, it is necessary to see certain provisions of the MCOC Act and its preamble. The preamble states that it is an Act to make special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, and for matters connected therewith and incidental thereto. The MCOC Act, states the preamble, makes special

provisions for prevention and control of, for coping with, criminal activity by organized crime syndicate or gang. Essentially, therefore, the MCOC Act targets the unlawful activities of the organized crime syndicate. The objects and statements of the MCOC Act show that organized crime has for quite some years come up as a very serious threat to the society. It knows no national boundaries and is fueled by illegal wealth generated by contract, killing, extortion, smuggling in contrabands, illegal trade in narcotics kidnappings for ransom, collection of protection money and money laundering, etc. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect on our economy. It was seen that the organized crime syndicates made a common cause with terrorist gangs and foster terrorism which extend beyond the national boundaries. There was reason to believe that organized criminal gangs have been operating in the State and, thus, there was immediate need to curb their activities.

9. The legislatures felt that the existing legal framework i. e. the penal and procedural laws and the adjudicatory system was found to be rather inadequate to curb or control the menace of organised crime. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime. It is the purpose of this Act to achieve these objects.

10. Section 2(1)(f) of the MCOC Act defines "organized crime syndicate' to mean a group of two or more persons who, acting singly or collectively, as a syndicate or gang indulged in activities of organized crime.

11. Section 2(1)(e) of the MCOC Act defines "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or

coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

12. The definition of “continuing unlawful activity” within meaning of Section 2(1)(d) states an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three or more, undertaken either singly or jointly, as a member of organized crime syndicate or on behalf of such syndicate in respect of which more than one chargesheets have been filed before a competent court within the preceding the 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, and e) in respect of which more than one charge- sheet have been filed before a competent court. Therefore, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, 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 organized crime are continuing unlawful activity prohibited by law.

14. This Court in the case of **Govind Sakharam Ubhe vs. State of Maharashtra, reported in 2009(3) Mh.L.J. (Cri.) 131** in paragraph No.37 defines "continuing unlawful activity". This court observed that 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. This is evident from section 3(4) of the MCOC Act which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lacks. It is further held that what is important is the nexus or the link of the person with organized crime syndicate. The link with the ‘organized crime syndicate' is the crux of the term `continuing unlawful activity'. If this link is not established, that person cannot be roped in.

15. By giving hypothetical examples, it is held that what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

16. This court further in the case of **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538** held that a person need not necessarily be a member of the organised crime syndicate/ gang; and yet be liable to be proceeded for offence of being party to a conspiracy by virtue of section 120-B of Indian Penal Code read with section 3(2) read with section 2(1)(a) of the MCOC Act. It is held that it is well established

that there can be no direct evidence of conspiracy. Ordinarily, conspiracy is to be inferred from different set of established circumstances. The fact that at the relevant time, there was no other criminal case or trial pending against him in respect of a specified cognizable offence and Court not having taken cognizance thereof, will not absolve such person from the alleged offence of MCOC Act by virtue of section 120-B of Indian Penal Code read with section 3(2) and section 2(1) (a) of MCOC Act.

17. In the light of the above well settled legal position and provisions enumerated therein, if the facts of the present case and the material collected during investigation are considered, it reveals from the statements of the witnesses that the applicant has prepared forged Aadhar and Pan Cards of the informant as well as one Dr.Kishor Dange and with the help of said forged documents, he opened accounts of said persons with the Maharashtra State Cooperative Bank. The consideration

amount obtained, he along with the other co-accused, executing sale-deed by impersonating the informant, is transferred to the said accounts and subsequently, the same was withdrawn. It further revealed during investigation that amount Rs.35.00 lacs was transferred in the account of co-accused Kaushal and friend of Kaushal viz. Atharva, Bhupesh Shinde, and Sahil Sheikh.

18. The CCTV Footage obtained from the said bank at Byramji Town Branch, revealed the applicant was seen along with a lady who impersonated the informant as Nisha Jaju and the other co-accused. The name of the said lady is Pratibha Vilas Meshram.

19. The investigation papers further reveal that during house search of the applicant, documents in the name of Dr.Kishor Dange are also seized.

20. Various crimes vide Crime Nos.49/24, 111/23, 539/22, and 714/22 are registered against the applicant of the similar nature. Recital of FIRs lodged in the above said

crimes reveals that with the similar *modus operandi* the applicant has prepared Electricity Billa and Aadhar Carda and with the help of the said documents, opened the accounta in the said bank and entered into various transactions to receive pecuniary gain. The association of the applicant with the co-accused reveals from investigation papers.

21. In crime No.706/2023, which is the present crime, the applicant is arraigned as co-accused. Imam Khan, in Crime No.49/2024, is shown to be accused along with Pratibha Vilas Meshram, who has impersonated herself as a Nisha Jaju, the informant in the present crime. In Crime No.111/23, the applicant is accused along with his wife. In Crime No.539/2022, which is also of similar nature, the statement of Dr.Kishor Dange and other various witnesses disclose about *modus operandi* of the applicant and, therefore, investigation officer sent a proposal to apply Section 23(1) of the MCOC Act. Thus, involvement of the

applicant in crime reveals in the organized crime.

22. This court in the case of **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538** observed that there was no other criminal case or trial pending against him in respect of a specified cognizable offence and Court not having taken cognizance thereof, will not absolve such person from the alleged offence of MCOC Act by virtue of section 120-B of Indian Penal Code read with section 3(2) and section 2(1)(a) of MCOC Act. It has been further held that a person need not necessarily be a member of the organised crime syndicate/gang; and yet be liable to be proceeded for offence of being party to a conspiracy by virtue of section 120-B of Indian Penal Code read with section 3(2) read with section 2(1)(a) of the MCOC Act.

23. While granting sanction under the provisions of MCOC Act, competent authority had considered various statements of the witnesses and nexus of the applicant with

the "organized crime syndicate" and thereby granted approval as well as sanction.

24. The Hon'ble Apex Court observed in the decision in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr, reported in (2005)5 SCC 294** that in order to invoke MCOC Act even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an "organised crime syndicate" or with the offence in the nature of an "organised crime" is established that would attract the invocation of Section 3(2) of MCOC Act. Therefore, even if one may not have any direct role to play relating to the commission of an "organised crime", but when the nexus of such person with an accused who is a member of the "organised crime syndicate" or such nexus is related to the offence in the nature of "organised crime" is established by showing his involvement with the accused or the offence in the nature

of such "organised crime", that by itself would attract the provisions of MCOC Act.

25. As observed by the Full Bench decision of this Court in the case of **State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr, reported in 2011(5) Mh.L.J. 386**, ingredients will be necessary to make out case of an organized crime (i) that there has to be a continuing unlawful activities; (ii) that such an activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organised crime syndicate or on behalf of such syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency.

26. The purpose behind the provisions also assumes

the importance. The purpose behind enacting the MCOC Act was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface does not lead to any narrower meaning that MCOC Act has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOC Act is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object.

27. Thus, to establish *prima facie* material, requirement is that there is an organized crime syndicate that organized crime has been committed by any member of organized crime syndicate or any person on behalf of

such syndicate. The organized crime has been committed by any member of organized crime syndicate or any person on behalf of such syndicate, the provisions of MCOC Act cant be invoked.

28. In the case of **Abhishek vs. State of Maharashtra and ors** *supra,* also the Hon'ble Apex Court considered that a bare look at clause (e) of Section 2(1) of MCOC Act makes it clear that 'organised crime' means any unlawful activity by an individual singly or jointly, either as a member of organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means.

29. Applying these principles, it can be seen that there is nexus between the applicant and other co-accused.

30. The provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control

illegal activities of the said gangs. The provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. Keeping the above objects and reasons and various principles in mind and statutory provisions of the MCOC Act, if restrictions for the grant of bail and the materials placed by the prosecution are considered, the applicants have not made out the case for grant of bail because in view of Section 21(4) of the MCOC Act, which bars the court from releasing accused of offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

31. As observed by the Hon'ble Apex Court in **Criminal Appeal No.1689/2012 (The State of Maharashtra vs. Vishwanath Maranna Shetty) decided on 19.10.2012**, while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the 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 organized 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*. It is further observed by the Hon'ble Apex Court that while dealing with application for grant of bail, in addition to broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

32. Considering the entire material on record, there is a *prima facie* material to show that there is nexus between the applicant and other members of the "organized crime syndicate" and he is involved in the

conspiracy.

33. To grant bail to accused, the court has to come to conclusion that accused is not guilty of offence on the basis of “reasonable grounds”. the expression “reasonable ground” has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that accused is not guilty of offence he is charged with. The reasonable belief on the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged crime. Thus, recording of satisfaction on these aspects is *sine qua non* for grant of bail.

34. In the light of the above well settled legal position, at this stage, there is a sufficient material on record to hold that involvement of the applicant reveals. It is difficult to come to conclusion that he is not guilty of the offence.

35. The evidence available on record *prima facie*

discloses complicity of the applicant in assisting the members of the crime syndicate to commit the organized crime. In view of the same, the application deserves to be rejected and the same is **rejected**.

36. Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!