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

CRIMINAL APPLICATION (BA) NO.424 OF 2025

Aman s/o Jiwan Khare
Vs.
State of Maharashtra, through Police Station Officer, Police Station Imamwada, Nagpur

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

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Mr. A. C. Jaltare, Counsel for the applicant.
Mr. D. V. Chauhan, Public Prosecutor a/b Mr. N. B. Jawade, APP for non-applicant / State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/05/2025

1. The applicant came to be arrested on 31.07.2024 in connection with Crime No.285/2024 registered with Police Station Imamwada, Nagpur for the offences punishable under Sections 308(4), 310(2), 60(a) of the Bhartiya Nyaya Sanhita, 2023 and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short ‘the MCOC Act’).

2. The crime is registered on the basis of report lodged by Smt. Aasha Tulshiram Rajput on an allegation that on 25.07.2024 when she was present in the shop, the present applicant and the other co-accused came in her shop and demanded Rs.5,000/- from her and also threatened her and thereafter on 30.07.2024 at about 9.30 p.m., the

present applicant and other co-accused came in her shop and forcefully took out the amount of Rs.2,000/- from the pocket of her employee Rajkumar Parwe and thereafter threatened her and left the place. On the basis of the report, police have registered the crime against the present applicant.

3. During the investigation, the involvement of the present applicant is revealed in similar type of the offence and also it revealed that the applicant is a member of the organized crime syndicate and in furtherance of the common intention of the said syndicate, they are involved in various offences and, therefore, the proposal was sent by the Investigating Officer to his superior and in view of Section 23(1) of the MCOC Act, the approval was granted thereafter the sanction was also granted. During the investigation, the involvement of the present applicant and his nexus with the other co-accused is also revealed and, therefore, the provisions of the MCOC Act are applied, and thereby the offence is registered against the applicant in view of Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act.

4. The applicant approached to this Court for grant of bail on the ground that there is no single offence registered against him along with other members of the organized crime syndicate. It is further submitted on behalf of the applicant that he is arraigned as an accused with the baseless

allegations. As far as his nexus with the co-accused, who is leader of alleged "organized crime syndicate", is concerned, investigation papers nowhere establish the link between both of them. As far as the previous offence is concerned, only one offence is registered against him from which he is already acquitted. It is submitted by the learned Counsel for the applicant that as there is no nexus between the present applicant and the other co-accused and, therefore, the offence punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act are not applicable against him. It is further submitted that now the investigation is already completed, charge-sheet is already filed and further detention of the applicant is not required. In view of that, as the bar under Section 21(4) of the MCOC Act is not attracted, he be released on bail.

5. Learned Public Prosecutor for the State strongly opposed for the same on the ground that the statement of the witnesses shows that the applicant is member of the "organized crime syndicate". Total 7 offences are registered against the member of the organized crime syndicate. The nature of the offence shows that offences are committed against the person and property for pecuniary gain. In the present FIR also the allegation against the present applicant is that they entered into the shop of the informant and committed the offence of robbery by snatching the amount. It is further submitted that as

far as the involvement of the present applicant along with the organized crime syndicate is concerned, which reveals from the investigation papers as well as the statements of the various witnesses. The statements of the various witnesses disclose the nexus between the present applicant and the other co-accused.

6. Learned Public Prosecutor placed reliance on the order of this Court passed in **Criminal Application (BA) No.1250/2024 [Deepak s/o Nandkishore Verma ..vs.. State of Maharashtra, through PSO, MIDC Police Station, Nagpur decided on 05.05.2025]** and submitted that this aspect is extensively considered by this Court. As far as the nexus of the present applicant with the other co-accused is concerned, he submitted that considering all these investigation papers, bar under Section 21(4) of the MCOC Act will attract and, therefore, the application deserves to be rejected.

7. After hearing both sides and on perusal of the investigation papers what is to be seen, whether there is a *prima facie* material to connect the present applicant with the members of the organized crime syndicate.

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 criminal 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, especially the

statement of the witnesses namely Rajkumar Vitthalrao Parve, Vijay Tulshiramji Rajput, Aaditya Ravindra Madavi and Usha Raju Parchake which show the nexus between the present applicant and the other co-accused. The statements of the witnesses further show that the applicant's involvement in the offences which are admitted against the person and property for gaining pecuniary gain. 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. Thus, considering the involvement of the present applicant in the alleged offence and his nexus when the other members of the organized crime syndicate and the *prima facie* case is made out against the present applicant and, therefore, the bar under Section 21(4) of the MCOC Act will attract against the present applicant.

18. 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.

19. 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 and, therefore, it is difficult to come to conclusion that he is not guilty of the offence. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass following order:

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate