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

CRIMINAL APPLICATION (ABA) NO.357 OF 2025
(Omkar @ Swapnil s/o Shubhash Thakur Vs. State of Maharashtra)

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

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Mr. R.A. Biranware, Advocate for the applicant.
Mr. N.B. Jawade, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 11, 2025.

By this application, being moved by the applicant for grant of anticipatory bail in connection with Crime No.667/2024 initially registered under Sections 118(1), 125 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 and subsequently registered under Section 111 of the Bharatiya Nyaya Sanhita, 2023.

2. The allegation against the present applicant is levelled on the basis of report lodged by Kamlakar Domaji Tajane stating that he is working as Night Security In-charge at WCL, Waghoda. On 10/07/2024 he was conducting a patrolling duty in the mines along with his colleagues in Mahindra Zylo bearing No.MH-12-RN-6850. They witnesses at about 4.30 AM that some suspicious activities, and therefore, stopped the vehicle. Rajesh Salam and Niranjan Patil alighted from the vehicle and at the relevant time, stones and sticks were pelted on their persons by 10-15 persons who came there for the purpose

of theft. The Security Guard namely Jayant Gajbhiye tried to stop those persons and at the relevant time he as well as other Security Guards were assaulted by sticks and stones due to which they received the injuries. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused. From the spot of incident, one co-accused was apprehended and handed over to the police station, Saoner. During the course of investigation, the crime chart of the present applicant was also collected. As it revealed from the investigation that the present applicant is a member of organized crime syndicate, and therefore, Section 111 of the BNS was invoked against the present applicant and the co-accused persons.

3. Learned Counsel for the applicant submitted that as far as the provisions of BNS under Section 111 is concerned which is not applicable as there is nothing on record to show that the present applicant is a member of organized crime syndicate and there is any connection between the present applicant and the other co-accused to show that he is a member of organized crime syndicate and in furtherance of the common object of the said syndicate he has committed any offence. There is no common charge-sheet filed against him along with the other co-accused. Merely on suspicion, he is arraigned as an accused. He submitted that the applicant is arraigned as an accused on the basis of CDR and SDR reports which

were obtained by the investigating agency. As far as his custodial interrogation is concerned which is not required. In view of that, the application deserves to be allowed by protecting the present applicant.

4. Learned APP strongly opposed the said application on the ground that during investigation, the association of the present applicant with the other co-accused is revealed. The Investigating Officer has collected the CDR and SDR reports which show that not only at the time of incident but prior and after the incident also there was communication between the present applicant and the other co-accused. He also invited my attention towards the tower location of the mobile of the present applicant at the time of incident which is shown at the spot of incident. Besides the said CDR and SDR reports, he has invited my attention towards the crime chart and submitted that though common offences are now registered against the present applicant but the similar nature of the offences are registered against the present applicant in his individual capacity. The involvement of the present applicant reveals as the co-accused has disclosed the fact which is not within the knowledge of the investigating agency. Thus, considering the various statements and the material collected during the investigation, *prima facie* case is made out against the present applicant to proceed against

him, and therefore, his custodial interrogation is required. He also placed reliance on the provisions of Section 21 of the MCOC Act and submitted that in view of Section 21(3) of the MCOC Act - nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act. In view of that also, the application for grant of anticipatory bail deserves to be rejected. He also submitted that the non-bailable warrant was issued against the present applicant and on that ground also the application deserves to be rejected.

5. I have heard learned Counsel for both the sides. On perusal of the recitals of the FIR and the investigation papers, it reveals that during the course of investigation, the CDR and SDR of the accused persons were obtained for a period of one year. From the said CDR it would be seen that the applicant is not only in contact with the other co-accused on the day of incident, but also prior to each and after the incident. The calls between the present applicant and the other co-accused Dipak Tikam, Shubham Thakur, Manoj Thakur are traced during the course of investigation. The history of the calls can be seen that on the day of the incident the tower location of the present applicant was shown at the spot of incident. Thus, this material is on record to show that on the day of incident, and even prior to that, the applicant was in a

continuous communication with the other members of the crime syndicate. The mobile location of the present applicant during this last preceding or at the time of incident, is also the same as that of the other co-accused persons near the mine which indicates his presence on the spot of incident, on the day of incident. It is submitted by the learned Counsel for the applicant that there is nothing on record to show the association of the present applicant and no offence is registered against the present applicant with the other co-accused. The crime chart which is on record sufficiently shows that in all two offences are registered against the present applicant vide crime No.55/2025 and the present time. He submitted that as there are two charge-sheets against the present applicant, therefore, the contention of the Prosecution that the applicant is the member of the organised crime syndicate in view of the definition given under Section 111 of the BNS is not applicable. He invited my attention towards Section 111 of the BNS which defines the Organised Crime which reads as follows :

> "***Section 111 – Organized Crime***
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> *(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person*

> *or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime."*
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> *The explanation given under Section 111 of the BNS for the purposes of this sub-section, defines "organised crime syndicate" :*
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> *"organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;*

It further explains a term theft. It also provides that whoever commits any petty organized crime shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

This is an additional provision in addition to the provisions which are under the Maharashtra Control Of Organised Crime Act, 1999.

6. 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. To cover these activities by way of new enactment in the Bharatiya Nyaya Sanhita, 2023 under Section 111 is inserted.

7. The definition given under 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.

8. 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, and therefore, this new provision is added in the Bharatiya Nyaya Sanhita, 2023.

9. Section 2(1)(e) of the MCOC Act defines "organised crime" as well as Section 111 of the Bharatiya Nyaya Sanhita, 2023 also defines the "organized 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.

10. The definition of "continuing unlawful activity" within meaning of Section 2(1)(d) of the MCOC Act 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 period of ten years and that court has taken cognizance of such offence.

11. 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.

12. This Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra, [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 lakhs. 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.

13. 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 cases 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.

14. Thus, in the light of the above well settled legal position and provisions enumerated therein, if the facts shows the association of the applicant with the

members of the organized crime syndicate then it is not necessary that there should have been an offence registered against him along with the other co-accused. The nature of the offences registered against the applicant are in the similar nature. The crime chart shows his involvement in the offence which are registered under Section 189(2), 190, 125, 125(a), 324(1), 352, 126(2), 324(c) of BNS. Thus, the crime chart shows the involvement of the present applicant in the similar nature of the offence.

15. During investigation it reveals that there was a constant communication between the present applicant and the other co-accused even the tower location is also at the same place wherein the other co-accused were found. One of the co-accused was apprehended at the spot of incident.

16. At this stage, when we are considering the anticipatory bail that itself is sufficient to show his involvement and his association with the other co-accused. As far as the involvement of the present applicant in the abovesaid offence is concerned it is a matter of evidence. At this stage, the material collected during the investigation sufficiently shows the association of the present applicant with the other co-accused and the CDR and SDR reports also connects him with the other co-accused.

17. The Hon'ble Apex Court observed in the decision in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and anr., [(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.

18. The investigation material sufficiently shows the association of the present applicant with the other co-accused. At this stage, the another circumstance which goes against the accused is that he is shown to be absconding as the non-bailable warrant is issued against him. Thus, considering that aspect also, the application of the present applicant when the non-bailable warrant is already issued against present applicant, cannot be entertained.

19. Considering the entire material on record as there is a *prima facie* material to show that the applicant is connected with the organised crime syndicate and his involvement is also reveals in the actual incident. The application for grant of anticipatory bail deserves be rejected.

20. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

***Divya**