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

CRIMINAL APPLICATION (BA) NO. 589 OF 2025

Hitesh Jagnnath Dekate 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
Mr. M.N. Ali, counsel for applicant Mr. C.A. Lokhande, APP for non-applicant/State.	

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/07/2025.

1. By this application, the applicant is seeking bail in connection with Crime No. 204/2023 registered with Police Station Ajni, Nagpur for the offence punishable under Sections 397, 341 of the Indian Penal Code, 1860; and Sections 4 and 25 of the Arms Act; and Section 135 of the Maharashtra Police Act; and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999. The applicant came to be arrested on 07/04/2023.

2. The crime is registered on the basis of a report lodged by informant Kundan Shrawan Humne, who was proceeding on his Scooty vehicle towards Pratapnagar, near Fulmati Layout, in front of the Nirmiti Heights building. The two to three unknown persons were standing there with their Activa vehicle. One of the person was holding a sharp-edged weapon in his hand. He stopped the informant and, by placing the

weapon on his neck, asked to give whatever he had; he snatched the amount of Rs. 600/- forcibly from his pocket. On the basis of the said report lodged by the informant, the offence was registered with Police Station Ajni, Nagpur, as aforestated.

3. During the investigation, it was revealed to the investigating agency that the involvement of the present applicant is incontinuous illegal activity, and thereafter, after obtaining the approval under section 23 (1) of the MCOC Act, the investigation was carried out by applying the provisions of the MCOC Act. After completion of the investigation and after obtaining Section 23 (2) of the MCOC Act, the charge-sheet came to be filed against the present applicant.

4. Heard learned counsel for the applicant, who submitted that as far as the nature of the offences are concerned, none of the offence is committed by the present applicant for pecuniary gain. There is no commonality between the present applicant and the other co-accused. Thus, there is nothing on record to show that he is a member of the organized crime syndicate, and being a member of the organized crime syndicate, his involvement is there in the offence. It is further submitted by him that now the investigation is already completed, there is no T.I. parade held, as far as the identification of the present applicant is concerned.

In view of that, the bar under Section 21 will not attract, and the applicant shall be released on bail.

5. In support of his contention, he placed reliance on the decision of this Court in the case of ***Bhupendra @ Golu s/o Suryakant Borkar Vs State of Maharashtra reported in 2017 ALL MR (Cri) 1561***

6. Learned APP strongly opposed the said application and submitted that there are nine offence are registered against the present applicant, which are not mentioned by him in the application. So criminal antecedents are not mentioned in the application. He further submitted that from the investigation papers, it reveals that the involvement of the present applicant is in continuing unlawful activities as defined in the MCOC Act. The offence is of a serious nature, and there is strong evidence against the present applicant / accused.

He further invited my attention towards the crime chart and submitted that considering the nature of the crime and the involvement of the present applicant along with the other members of the organized crime syndicate sufficiently shows his involvement as a member of the organized crime syndicate and committing the offence for pecuniary gain. Thus, considering the prima-facie material against the present applicant and the ingredients of the offence requires to initiate the action under the MCOC Act revealed from the investigation papers, in view of that, the application deserves to be rejected.

7. In support of his contention, he placed reliance on the order passed by this Court in ***criminal application (BA) No. 1250/2024 decided on 05/05/2025***, wherein this Court has considered the aspect of application of the MCOC Act, and prays for rejection of the application.

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 criminal activity by organized crime syndicates or gangs 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 syndicates or gangs. 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 contraband, illegal trade in narcotics, kidnappings for ransom, collection of

protection money, money laundering, etc. The illegal wealth and black money generated by organized crime being very huge, it has had serious adverse effects 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 an 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 organized crime, and therefore the special law was enacted 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 charge-sheets 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. 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.

16. In the light of the above well-settled legal position and the provisions enumerated therein, if the facts of the present case are taken into consideration, there are several offences registered against the present applicant along with the members of the organized crime syndicate. The investigation papers further

reveals that present applicant was involved in two crimes on the same day, wherein the deadly weapons are used by him in committing the crime. The investigation papers, further shows that there is continuous involvement of the present applicant in the offences like Sections 326, 397, 395 of the IPC, which are committed for pecuniary gain. The statements of the witnesses recorded during the investigation reveals his involvement in the continuous criminal activities, which can be termed as a continuous illegal activities. As observed earlier, 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 cannot be a ground to held that he is not a member of organized crime. Herein the present case, in fact, there is a commonality between the present applicant and the other co-accused.

17. 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.

18. As far as involvement of the applicant in the above said offences are concerned in all nine offences are pending against the present applicant, which are of

a similar nature. Thus, considering the continuous illegal activities and continuous unlawful activities of the present applicant, there is a nexus between him and the other co-accused, who are the members of organized crime syndicate.

19. 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*** held 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.

20. A bare perusal of the charge-sheet and the various offence registered against the present applicant, his involvement is continuous unlawful activity reveals

and therefore, authority come to the conclusion that the provisions of the IPC are inadequate to deal with the present applicant and by considering the same, the provisions of the MCOC Act are applied.

21. 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.

22. After invocation of the MCOC Act and when the prima-facie case is made out against the accused, then bar under Section 21 (4) will attract. 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.

23. Moreover, 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 applicant has not made out the case for grant of bail and therefore, the application deserves to

be rejected. Accordingly, I proceed to pass the following order.

The criminal application stands **rejected.**

[**URMILA JOSHI-PHALKE, J.]**