



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

CRIMINAL APPEAL NO.315 OF 2025

Zulferkar @ Chotu s/o Jabbar Gani
Aged about 39 years, Occupation – Business,
R/o. New Laxmi Nagar,
Gondia

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
P.S. Ramnagar, Gondia,
District Gondia
2. Vishal s/o Murlidhar Gajbhiye
Aged about 28 years,
R/o. Marartoli, Gondia,
District Gondia

...RESPONDENTS

Mr. Surendra Singh, Sr. Advocate a/b Mr. M.P. Khajanchi, Advocate a/w
Mr. M.I. Dhattrak, Advocate for the appellant.
Mr. V.A. Thakare, APP for the State.
Mr. P.S. Lingayat, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : AUGUST 05, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for both the parties.

2. By preferring this appeal, the appellant has challenged the order passed by the learned District Judge-1 and Additional Sessions Judge, Gondia in Sessions Trial No.48/2013 in connection with Crime No.88/2012 registered at police station Ramnagar, Gondia, District Gondia for the offence punishable under Sections 109, 120B, 147, 148, 302 and 307 read with Section 149 of the Indian Penal Code and Sections 3, 4, 25 and 27 of the Arms Act and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of the Bombay Police Act. Since, 09.09.2020 the appellant is behind bar.

3. As per report lodged against the appellant by respondent No.2 - Vishal Murlidhar Gajbhiye with the police station, the complainant was acquainted with one Dharam Dawane as well as Rajendra Dawane. On 9.10.2012, at about 11:00 pm, he had been to petrol pump at Jaistambha Chowk for filling petrol in his motorcycle and was passing from over bridge towards his house. At the relevant time, he saw Dharam Dawane aged about 30 years underneath the bridge of Shakti Square communicating somebody, and therefore, he stopped there and was making enquiry with him. At the relevant time, one white colour Tata Sumo sumo came from Gondia side and gave a dash to him as well as Dharam Dawane. The car driver stopped the vehicle and from the said vehicle the appellant along with other co-accused got down. The

appellant fired two rounds from his country made pistol and the other co-accused, who were along with him, assaulted Dharam Dawane by iron rods, sticks, and swords and lifted him and put him in the car. At the same time, the complainant was also assaulted by sticks and iron rods, due to which he sustained injuries on his person. Subsequently, he came to know that due to the previous dispute on account of money, Dharam Dawane was taken by the appellant and the co-accused and committed his murder and also caused injuries to the complainant. On the basis of the said report, police have registered the crime against the present appellant as well as the other co-accused.

4. After registration of the crime, the appellant approached to the Sessions Court for grant of bail but the same was rejected, and therefore, he approached to this Court for grant of bail by filing Criminal Bail Application No.598/2015 which was allowed. As the appellant had jumped from the bail conditions the complainant filed an application bearing Criminal Application (APPLN) No.27/2016 for cancellation of bail. By order of this Court on 01/07/2017 the bail granted to the present appellant was cancelled and thereafter the appellant was arrested on 09/09/2020. After his re-arrest, he again filed Criminal Appeal No.500/2023 which was also rejected by this Court. Now, this application is filed by the appellant on the ground of delay in trial.

5. Heard learned Senior Counsel for the appellant who submitted that initially the appellant was arrested on 04/02/2012 thereafter he was granted bail and released on bail on 30/09/2015 but as he jumped from the bail conditions his bail was cancelled on 01/07/2017 and he was rearrested on 09/09/2020. He submitted that since 09/09/2020 there is no progress in the trial, not a single witness is examined. The prosecution is intending to examine 54 witnesses and the sufficient period is required to examine the said witnesses and the appellant cannot be kept behind bar for an indefinite period. He submitted that now the issue is settled by the Hon'ble Apex Court in the catena of decisions that the right of the accused of a speedy trial enshrined under Article 21 of the Constitution of India and if it violates then irrespective of the nature of the crime, the appellant/accused to be released on bail. Thus, he submitted that as there is no progress in the trial and the appellant cannot be kept behind bar for an indefinite period and he cannot be kept for an indefinite period irrespective of the nature of the crime, and therefore, he be released on bail.

6. Learned APP strongly opposed the appeal and submitted that there are criminal antecedents against the present appellant. After the bail was cancelled he was absconding for three years and the investigating agency could arrest him on 09/09/2020. If he is again released on bail there is every apprehension of absconding, and

therefore, the appeal deserves to be rejected. He also invited my attention towards the merits of the matter and submitted that after registration of the crime, the Investigating Officer has filed charge-sheet on 06/01/2023. During investigation, the involvement of the present appellant revealed. He is the person who is responsible for giving deadly blows by means of deadly weapon like swords, iron rods and also used the pistol. This court observed that from postmortem report *prima facie* death is attributed to the acts of the present appellant, and therefore, there is sufficient material as far as the present appellant is concerned, and therefore, the application is rightly rejected earlier and no reason to consider the ground of delay in trial. He also invited my attention towards the fact that there was another trial under the provisions of the MCOC bearing No.103/2020 was pending against the present appellant and precedent is to be given to the trial of the MCOC and that may be reason for delay in trial. He submitted that considering the involvement of the present appellant in the above said crime and the crime is a serious in nature, there is direct evidence as far as the present appellant is concerned as the informant himself is the eye-witness. Moreover, there is a reason for delay in trial as another case is pending against him under the provisions of the MCOC Act and in view of Section 10 of the MCOC Act this trial was stayed, and therefore, the appellant has no reason to be

released on bail, and therefore, the grounds raised in the application deserves to be rejected and the application is also requires to be rejected.

7. On hearing both the sides and on perusal of the entire investigation papers, as far as the involvement of the present appellant in the alleged offence is concerned no dispute reveals. There is direct evidence as well as the circumstantial evidence as far as the involvement of the present appellant is concerned. On merits, the earlier application is already rejected. Now, the only ground raised in the application is that there is inordinate delay in trial. There is no dispute as far as the legal position is concerned that Article 21 enshrines the right of the present appellant as to the speedy trial and if it is violated irrespective of the nature of the crime, he is to be released on bail.

8. It is observed by the Hon'ble Apex Court in the case of Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another [2024 SCC OnLine SC 1693].

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

9. Learned APP vehemently submitted that as the another trial No.103/2020 was pending and precedent was given, and therefore, in view of Section 10 of the MCOC Act this trial was held up. This aspect is already considered by this Court in one of the decision and it is already observed that use of the word “shall” in Section 10 of the MCOC Act indicates its mandatory nature. No discretion is left to a Court where an application is made under Section 10 of the MCOCA not to keep a case in abeyance till the disposal of the MCOC case, which is pending against the accused. Undoubtedly, a public prosecutor has a very important role to play under the scheme of the MCOCA but there is no scope for the public prosecutor to exercise any discretion when it comes to Section 10 of the MCOC Act.

10. In the light of the above observation it is necessary to refer Section 10 of the MCOC Act which reads as under :

“10. Trial by Special Courts to have precedence.

The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other cases and accordingly the trial of such other cases shall remain in abeyance.”

11. The Hon'ble Apex Court, while interpreting *pari materia* provisions under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, interpreted Section 12 of the said Act. Said Section 12 of the said Act reads thus:

"12. Trial by Special Court to have precedence.

The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance."

12. The Hon'ble Apex Court, in the case of **Dharmendra Kirthal Vs. State of Uttar Pradesh and anr., [(2013)8 SCC 368]** in paragraph No.32 has observed as under:

"32. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial of such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special

Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.”

13. Thus, from the aforesaid principles laid down by the Hon’ble Apex Court, it is crystal clear that legislative intent behind the said provisions was not that the proceeding of other offences must be kept in abeyance till conclusion of the trial under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. Even, in the case of **Mobin Iftikhar Zaidi Vs. State of U.P. and ors. (Application under Section 482 No.27361 of 2011)**, it has been held as under:

“A perusal of the aforesaid provision reveals the legislative intent behind the said provision and its object was that the trial under the Gangsters Act should be given preference and the same should not get unduly delayed because of pendency of other cases in other courts. The legislative intention was not that the proceedings of other offences must be kept in abeyance till conclusion of trial under the Gangsters Act. Its intent was that the dates fixed in the other trials and in the case under the Gangsters Act should not clash together, in order to ensure that the trial under the Gangsters Act does not get unduly delayed or hampered with and reaches to its logical conclusion at the earliest. It can not be the intention of the legislature that if a person is required in other cases in crimes of such heinous nature such as murder, dacoity, loot and

rape etc, the trial of those offences should not proceed further till conclusion of trial under Gangsters Act. In view of the above, it is clear that the legislative intent is that the trial under the Gangsters Act need be given preference to other trial.”

14. By considering the above decisions of the Hon’ble Apex Court, the interpretation of the said provisions shows that it is not the proceedings in a matter which has preference or precedence but it is the trial of the offence of the MCOC by the Special Court which will have precedence. It is thus apparent that Section 10 would come into play and be operative only in the event of the trial of an offence under the MCOC having commenced. If the trial has not yet commenced, there would be no question of Section 10 coming into play.

15. Thus, from the aforesaid discussion, it is clear that the Hon’ble Apex Court while interpreting the provisions explained the intention of legislature behind enacting Section 12 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 which is *pari materia* provisions of Section 10 of the MCOC Act that the case under the said Act should not be delayed and other case can also go on, but clash of dates should be avoided and for which purpose ‘kept in abeyance’ would mean if dates in both cases are common, the case under the said Act will get precedence.

16. In view of the above observation, if the submission made by the learned APP is taken into consideration, the trial under the MCOC Act is already at the fag end and it is for submitting the case laws, and therefore, there is no reason for the trial put to kept this case in abeyance. The order passed by this Court in Criminal Bail Application No.847/2024 dated 06/01/2025 is already circulated to the entire State of Maharashtra.

17. Insofar as the right of the present appellant as to the speedy trial is concerned there is no dispute that the appellant is behind bar since 09/09/2020. Till today not a single witness is examined. The right of the present appellant as to the speedy trial enshrined under Article 21 of the Constitution of India is affected and violated. The appellant cannot be kept behind bar for an indefinite period and on that ground itself the appeal of the present appellant deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The appeal is allowed.

(ii) The order dated 04/02/2025 passed by the District Judge-1 and Additional Sessions Judge, Gondia in Sessions Trial No.48/2013 is hereby quashed and set aside.

(iii) The appellant - Zulferkar @ Chotu s/o Jabbar Gani in connection with Crime No.88/2012 registered at police station Ramnagar, Gondia, District Gondia for the offence punishable under Sections 109, 120B, 147, 148, 302 and 307 read with Section 149 of the Indian Penal Code and Sections 3, 4, 25 and 27 of the Arms Act and Section 3(2) (5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 135 of the Bombay Police Act, be released on bail, on executing PR. bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iv) The appellant shall attend the police station Bhandara city twice in a month i.e. on every 1st and 15th day of every month till conclusion of the trial and shall cooperate with the investigating agency.

(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either physically or through electronic media.

(vi) The appellant shall not enter into the vicinity of Gondia district except attending the proceeding before the Sessions Court, Gondia.

(vii) The appellant shall furnish his address with address proof wherein he is intending to reside after he is released on bail. Additionally, the names of his two relatives along with the address proof, before the investigating agency.

(viii) The appellant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

18. The contravention of any of the condition would lead to the cancellation of bail.

19. The criminal appeal stands disposed of.

20. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)