



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

CRIMINAL APPLICATION (BA) NO.847 OF 2024

Badal s/o Dhanraj Madke

..VS..

The State of Mah., thr.PSO, Kalamna Police Station, Nagpur

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

Court's or Judge's Order

Shri S.P.Sonwane, Counsel & Shri A.A.Thakur, Mrs.Shiba Thakur, Shri Aquid Mirza, Advocates for the Applicant.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Mrs.H.N.Prabhu, Addl.P.P. for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 24/01/2025

PRONOUNCED ON : 06/01/2025

1. Heard.
2. The present application is filed by the applicant for grant of bail under Section 483 of the BNSS (under Section 439 of the Code of Criminal Procedure) in respect of Crime No.639/2022 registered at Police Station Kalamna, Nagpur for the offences punishable under Sections 363, 369, 370, and 120-B read with 34 of the Indian Penal Code and under Sections 75, 81, and 84 of the Juvenile Justice (Care

and Protection of Children) Act, 2015.

3. The applicant came to be arrested on 11.11.2022.

4. The crime is registered on the basis of a report lodged by one Rajkumari Raju Nishad alleging that on 10.11.2022 co-accused Yogendra Prajapati came to her house and took her eight months' old child in the shop behind her house to purchase something for the child and not returned back. Thereafter, she searched for said Yogendra Prajapati. However, he along with his wife were absconding along with her child. As she could not find her child, she approached the police and lodged the report. During investigation, it revealed that co-accused Yogendra Prajapati has handed over the said child to one accused Farzana @ Anjum Ansar Qureshi and obtained consideration amount. Thereafter, accused Farzana @ Anjum Ansar Qureshi, Seema Parveen, Shweta Khan, and Sachin Patil abducted the said child and sold the said child to one Jitendra Jambhulkar for consideration of Rs.2,50,000/-. The

alleged transaction has taken place at the house of the applicant.

5. As per contentions of the applicant, his mother Laxmibai is doing the work of massage to the newly born children. Co-accused Sachin Patil met her and brought the child to the house for massage. Thereafter, all other accused came there and informed that the said child is to be given for adoption. Thereafter, he called one Khobragade as he was aware that said Khobragade was searching for somebody who will give child in adoption to his daughter. As said Sachin Patil represented him that the child is to be given in adoption, he called Khobragade and the child was handed over by the co-accused. As far as abduction of the child and trafficking are concerned, he is not concerned with the same.

6. Initially, the applicant filed Criminal Application (BA) No.386/2023 which came to be rejected on 3.7.2023. Now, this application is filed by the applicant on the ground of delay in trial and the trial is kept in abeyance as the other

co-accused are facing charge under the provisions of the **Maharashtra Control of Organized Crime Act, 1999 (MCOC Act)**. In view of Section 10 of the MCOC Act, the trial, in which the applicant is an accused in connection with Crime No.639/22, is kept in abeyance.

7. Learned counsel for the applicant submitted that as far as involvement of the applicant is concerned, the same is not in human trafficking or kidnapping. Merely because the child was given in adoption in his house, he is implicated as an accused. Since the date of his arrest i.e. 11.11.2022, he is behind the bar and as other co-accused namely Sachin Patil, Shweta Khan are facing another trial, the provisions of the MCOC Act are invoked, the present trial is kept in abeyance. Thus, the applicant cannot be kept behind bar for indefinite period as there is no progress in the special court as far as trial of the other accused under the provisions of the MCOC Act is concerned. He submitted that the trial of the applicant is stayed in view of Section 10 of the MCOC Act

and, therefore, the applicant be released on bail.

8. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Criminal Application No.2982/2004 decided by this court on 10.12.2004;

2. Criminal Application (BA) No.1147/2018 (Rohit alias Golu s/o Hariprasad Tiwari vs. State of Maharashtra, thr.PSO PS Ramnagar, District Nagpur) decided by this court on 20.9.2019;

3. Dashrath Bapu Shinde and ors vs. State of Maharashtra, reported in 2009 ALL MR (Cri) 1981;

4. Criminal Application (BA) No.429/2024 (Dattatray Shrikrushna Shejole vs. The State of Maharashtra, thr.PSO, Khamgaon Rural Police Station, district Buldhana) decided by this court on 6.8.2004, and

5. Criminal Appeal No.2787/2024 (Javed Gulam Nabi Shaikh vs. State of Maharashtra and anr) decided by the Hon'ble Apex Court on 3.7.2024.

9. *Per contra*, learned Public Prosecutor for the State strongly opposed the application and submitted that the offence alleged against the applicant is of a serious nature and the earlier bail application of the applicant is rejected on

merits. As far as Section 10 of the MCOC Act is concerned, the provisions of the same do not deal with the stay to the proceedings. It is wrongly misinterpreted by the trial court and wrongly kept the trial in abeyance. He submitted that the provisions is made only with an intention that if dates of two proceedings are clashed with each other, the precedence is to given to the proceedings pending before the special court. Thus, contentions of learned Public Prosecutor are that if both the cases are pending in two different courts and their dates are not clashing with each other, there is no hurdle to the sessions court to proceed with the matter. He submitted that admittedly, the right of speedy trial is enshrined under Article 21 of the Constitution of India and, therefore, the trial court shall endeavour to dispose of the trial of the present applicant, but that cannot be a ground to release the applicant on bail considering the gravity of the charge levelled against the applicant.

10. In support of his contentions, learned Public

Prosecutor for the State placed reliance on following decisions:

1. **Dharmendra Kirthal vs. State of Uttar Pradesh and anr**, reported in (2013)8 SCC 368, and

2. **Vipul @ Alok Singh and ors vs. State of UP and anr** decided by the Allahabad High Court on 12.7.2023.

As far as the judgment of the Division Bench of this court in the case of **Dashrath Bapu Shinde and ors** *supra*, relied upon by learned counsel for the applicant, is concerned, he submitted that the Division Bench has not interpreted the provisions in its proper perspective. He submitted that as per the law of precedent, when the Hon'ble Apex Court in terms of Article 141 of the Constitution of India decides the issue, the judgment of the Supreme Court being that of the Superior Court is binding on all the courts and law declared by the Supreme Court should be followed. To support the same contention, he placed reliance on the decision in the case of **The State of Maharashtra vs. Shri Murarao Malojirao Ghorpade**, reported in 2009(6) Mh.L.J.

788, State of Bihar vs. Kalika Kuer alias Kalka Singh and ors, reported in (2003)5 SCC 448, and Sitaram Deoba Maratha vs. Hawadya Piraji Naobudha and ors, reported in AIR 1976 Bom 1.

11. After hearing both the sides, as far as the merits of the matter is concerned, admittedly, on merits the previous bail application is rejected by this court. The allegation against the applicant is trafficking of human which is heinous offence. It is a crime against humanity resulting in human rights violations. While considering the bail application, as far as the involvement of the applicant in human trafficking is concerned, the court must take into account the fundamental rights of the victim not to be trafficked.

12. In the present case, from the investigation papers it reveals that on 10.11.2022, co-accused Yogendra Prajapati and Rita Prajapati kidnapped the child aged about eight months, carried him to co-accused Farzana and Seema

Parveen. These co-accused circulated the information about the child to another accused Shweta Khan and said Shweta Khan circulated the said information to co-accused Sachin Patil. Said co-accused Sachin Patil informed the present applicant and the present applicant has searched the customer for the kidnapped child. Thereafter, all the accused persons with an intention of trafficking the child and in furtherance of conspiracy came to “Awale Babu Chowk” and, thereafter, at the house of the present applicant. The applicant called customers Ravindra Khobragade and sold the child with the help of said Khobragade to one Jitendra Jambhulkar and Ujjwala Jambhulkar. From the consideration amount, the applicant has also received some amount which was recovered from him during the investigation.

13. Thus, the role of the applicant revealed from the investigation. There are criminal antecedents against the applicant in all twelve crimes registered against him

including crime No.212/2014 under Sections 201 and 302 of the Indian Penal Code. Thus, as far as merits of the matter is concerned, *prima facie* case is made out against the applicant. The involvement of the applicant is in a human trafficking which is serious crime.

14. The another ground raised by the applicant is that he cannot be detained for indefinite period as the other co-accused are facing charge under the provisions of the MCOC Act and, therefore, the trial of the applicant is kept in abeyance.

15. Learned counsel for the applicant submitted that in view of Article 21 of the Constitution, speedy trial is the fundamental right enshrined under the said Article which is affected as the trial is kept in abeyance. In support of his contention, he placed reliance on the orders passed by this court in **Criminal Application No.2982/2004** *supra* and **Criminal Application (BA) No.1147/2018** *supra*. The Coordinate Bench of this court, by relying upon the decision

of the Division Bench of this court in **Dashrath Bapu Shinde and ors vs. State of Maharashtra** *supra*, held that Section 10 of the MCOC Act is mandatory in nature and there is no discretion available with anybody and unless and until MCOC Case is disposed of or decided, the other cases cannot proceed further.

16. Learned counsel for the applicant invited my attention towards the observations of the Division Bench of this court in the case of **Dashrath Bapu Shinde and ors** *supra* wherein it is held that the Sessions Court, Mumbai committed no illegality in following the mandate of Section 10 of the MCOC Act. In paragraph No.15 it is held that Section 10 of the MCOC Act mandates that the trial of any offence under the MCOCA 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 it shall be concluded in preference to the trial of such other cases and accordingly, the trial of such other cases shall

remain in abeyance. In our opinion, the 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 MCOC Act 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 MCOC Act, but there is no scope for the public prosecutor to exercise any discretion when it comes to Section 10 of the MCOC Act.

17. In the light of the above observations, it is necessary to refer Section 10 of the MCOC Act, which reads as:

“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.”

18. 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.”

19. The Hon'ble Apex Court, in the case of **Dharmendra Kirthal** *supra*, 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.”

20. 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.”

21. The Karnataka High Court in Criminal Petition No.9398/2018 with Criminal Petition Nos.9399 and 9430/2018 (**State of Karnataka vs. Rajendra Kumar @ Bannanje Raj @ Kumara Raj @ Hemanth Hegde s/o M.Sundara Shettigar**), considered the provisions under Section 10 of the KCOCA which is in pari materia with that of the MCOCA, which is reproduced hereunder for easy reference:

"10. Trial by Special courts to have precedence. - The trial of any offence under this Act 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."

22. Perusal of the above Section indicates that it is the similar provision under the KCOCA by which the special courts have precedence over the trial in the other case in the another court.

23. 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 under KCOCA which has preference or precedence but it is the trial of the offence under the KCOCA 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 KCOCA having commenced. If the trial has not yet commenced, there would be no question of Section 10 coming into play.

24. 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.

25. The Hon'ble Apex Court, in the case of **Dharmendra Kirthal** *supra*, held that "it is apposite to note here that there is a distinction between an accused who faces trial in other courts and the accused in the special courts because the accused herein is tried by the Special Court as he is a gangster as defined under Section 2(c) of the Act and is involved in anti-social activities with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person. The accused persons under the Act belong to altogether a different category. The legislature has felt that they are to be dealt with in a different manner and, accordingly, the trial is

mandated to be held by the special courts in an expeditious manner”. It is further held that “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.” The further observation of the Hon’ble Apex Court shows that on a careful scrutiny of the provision, it is quite vivid that the trial is not hampered as the trial in other courts is to remain in abeyance by the legislative command. Thus, the

question of procrastination of trial does not arise. As the trial under the Act would be in progress, the accused would have the fullest opportunity to defend himself and there cannot be denial of fair trial. Thus, in our considered opinion, the aforesaid provision does not frustrate the concept of fair and speedy trial which are the imperative facets of Article 21 of the Constitution.

26. The law laid down by the Hon'ble Apex Court in terms of Article 141 of the Constitution of India is binding on all the courts as the law declared by the Hon'ble Apex Court should be followed. The law of precedent is not only well accepted principle but also is one of the most pertinent facets of judicial interpretation and, therefore, the law laid down by the Hon'ble Apex Court is binding on this court and, therefore, it is to be followed. The settled principle is that The law of precedent thus takes in its ambit an implied but apparent requirement of following the judicial dictum settled by the Superior Court, a larger Bench with strict application

equally binding is the judgment of an earlier coordinate bench unless there are grounds and reasons felt by the Bench dealing with subsequent matter that the law enunciated by an earlier judgment falls within the exceptions of law of precedent and the facts and circumstances of the case so require. Therefore, the judgments of the Hon'ble Apex Court being that of the Superior Court and in terms of Article 141 of the Constitution are binding on the courts.

27. The other ground raised by the the applicant is that there is delay in trial.

28. Admittedly, the trial has not progressed in view of Section 10 of the MCOC Act.

29. Learned counsel for the applicant submitted that right of speedy trial is affected and placed reliance on the decision of **Javed Gulam Nabi Shaikh** *supra*.

30. The decision in Criminal Appeal No.2790/2024 (**Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh**) decided by the Hon'ble Apex Court on

18.6.2024 was relied upon by Three-Judge Bench of the Hon'ble Apex Court in the case of **Union of India vs. K.A.Najeeb, reported in (2021) SCC OnLine SC 50** wherein respondent therein was in jail for more than five years and charges were framed and 276 witnesses were left to be examined and the Hon'ble Apex emphasized that liberty granted by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. No under trial can be detained indefinitely pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

31. The decision in the case of **Union of India vs. K.A.Najeeb, reported in (2021) SCC OnLine SC 50** was distinguished by Two-Judge Bench of the Hon'ble Apex Court in the case of **Gurwinder Singh vs. State of Punjab, reported in (2024)SCC OnLine SC 109** and it is observed that in the

case of **Union of India vs. K.A.Najeeb** *supra* this court considered that the appellant has been in jail for last five years which is contrary to law laid down in the case of **K.A.Najeeb**. This court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years. He was released on bail. It is held that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as ground to grant bail.

32. In a subsequent decision, in the cases of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari** *supra* by referring decisions in cases of **K.A.Najeeb** and **Gurwinder**

Singh, the Hon'ble Apex Court held that. In **Gurwinder Singh** *supra* on which reliance has been placed by the respondent, a Two Judge Bench of this Court distinguished **K.A.Najeeb** *supra* holding that the appellant in **K.A.Najeeb** *supra* was in custody for five years and that the trial of the appellant in that case was severed from the other co-accused whose trial had concluded whereupon they were sentenced to imprisonment of eight years; but in **Gurwinder Singh**, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the Two-Judge Bench of this Court in **Gurwinder Singh** *supra* observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. It was further held that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused under trial under Article 21 of

the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, **K.A.Najeeb's** case *supra* being rendered by a three Judge Bench is binding on a Bench of Two-Judges.

33. Thus, having regard to the above discussion, facts of the present case also show that the accused is involved in human trafficking and kidnapping of a child. The factors considered in the case of **K.A.Najeeb** are that other co-accused were sentenced imprisonment upto eight years and he was behind bars for more than five years.

34. Thus, in view of the law laid down by the Hon'ble Apex Court, the trial against persons cannot be kept in abeyance till conclusion of the trial. Admittedly, the trial has not progressed as the same is kept in abeyance in view of Section 10 of the MCOC Act.

35. In respect of trial, the trial Court should follow the decisions of the Hon'ble Apex Court reported in **Akil alias Javed vs. State (NCT of Delhi)**, reported in (2013) 7 SCC 125 more particularly paragraph Nos.43 and 44 thereof which are reproduced hereunder for easy reference:

"43. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in Shambhu Nath (supra) such recalcitrant approach was being made by the trial Court unmindful of the adverse serious consequences affecting the society at large flowing therefrom. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial Judge, as confirmed by the impugned judgment of the High Court, we direct the Registry to forward a copy of

this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision reported in Rajdeo Sharma (supra) and reiterated in Shambhu Nath (supra) by issuing appropriate circular, if already not issued. If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial Courts without providing scope for any deviation in following the procedure prescribed in the matter of a trial of sessions cases as well as other cases as provided under Section 309 of Cr.P.C. In this respect, the High Courts will also be well advised to use their machinery in the respective State Judicial Academy to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decisions reported in Rajdeo Sharma (supra) which has been extensively quoted and reiterated in the subsequent decision of this Court reported in Shambhu Nath (supra) and comply with the directions at least in the future years.

44. In the result, while we upheld the conviction and sentence imposed on the appellant, we issue

directions in the light of the provisions contained in Section 231 read along with Section 309 of Cr.P.C. for the trial Court to strictly adhere to the procedure prescribed therein in order to ensure speedy trial of cases and also rule out the possibility of any maneuvering taking place by granting undue long adjournment for mere asking. The appeal stands dismissed."

36. In view of the above said observations, the trial court shall proceed with the trial. As far as ground raised by the applicant for grant of bail is concerned, the same is not sustainable and as such the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

...../-