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

CRIMINAL APPLICATION (BA) NO.960 OF 2024
(Mr. Sumit s/o Rajkumar 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. A.S. Kesari, Advocate for the applicant.
Ms S.S. Dhote, APP for the State.

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

By this application, the applicant is seeking bail in connection with Crime No.806/2023 registered with Jaripatka Police Station, Nagpur for the offences punishable under Sections 364, 397, 294 of the Indian Penal Code and under Section 3/25 of the Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as 'MCOC Act').

2. The crime is registered on the basis of report lodged by Kamal Anil Naik. As per the allegation on 16.10.2023 at about 12.10 a.m. when he along with his friends Atul Atram and Muzaffar Sheikh visited the house of Samrat Gondane on occasion of his daughter's birthday. When they were standing in front of Ramesh Mutton shop, a white colour car came driving in a rash and negligent manner by co-accused Sumit Thakur and stopped near to the informant. The informant shouted upon the driver of the said car. The driver stopped the said car at some

distance, thereafter the informant along with his two friends went near the car and questioned him about the manner in which he has driven the said car, on that count, the driver replied that his name is Sumit Thakur and whether he has not identified him and also threatened him that he will see him after dropping the girl who was along with him. On that count, there was altercation between them, thereafter the present applicant left the spot. He again came back at about 12.50 a.m. along with the other three persons. The said persons threatened the informant and his friends of dire consequence by pointing out Mauser. Thereafter, the co-accused took the informant and his friends forcefully in the car snatched the amount and their mobiles thereafter they were assaulted. On the basis of the said report, police have registered the crime against the present applicant as well as the other co-accused.

3. Learned Counsel for the applicant submitted that as far as the evidence against the present applicant to show that he is a leader of organized crime syndicate is concerned, no material is collected by the investigating agency. The Investigating Officer has relied upon the crime chart. All the offences registered against the present applicant are in his individual capacity. There is no single offence registered against the present applicant along with the other members of the organized crime syndicate. He submitted that in fact the statements of the witnesses shows that no such incident has taken place. Subsequently

after thought this FIR is lodged against the present applicant only to implicate in the alleged offence. He submitted that there is no material to connect the present applicant with the alleged offence even the confessional statement is in the nature of exculpatory statement. Thus, considering there is no material against the present applicant and the other co-accused are already released on bail, bar under Section 21(4) of the MCOC Act would not attract. In view of that, he be released on bail.

4. *Per contra*, learned APP strongly opposed the said application on the ground that total 18 offences are registered against the present applicant. There are more than one charge-sheet filed in the preceding 10 years. The applicant is the gang leader running the organized crime syndicate. His statement under Section 18 of the MCOC Act is recorded. In view of bar under Section 21(4) of the MCOC Act the application of the present applicant deserves to be rejected. She further submitted that considering the nature of the offence and the crime chart shows the involvement of the present applicant in a various illegal activities which are committed by the organized crime syndicate for the pecuniary gain. In view of that, the application deserves to be rejected.

5. In support of her contention she placed reliance on ***Abhishek Vs. State of Maharashtra and ors. [2022 Livelaw (SC) 516]*** and invited my attention towards para No.17.5 and submitted that merely because

the applicant is acquitted in some of the offences as witnesses turned hostile is not sufficient to held that the involvement of the present applicant is not in a continuing unlawful activity. The registration of the offences against the present applicant itself is sufficient to show that his involvement is in a continuing unlawful activity, and therefore, in view of bar under Section 21(4) of MCOC Act, the application deserves to be rejected.

6. Having heard both sides and perused the investigation papers from which it reveals that allegation against the present applicant is that on the day of incident, he was along with the other co-accused and the co-accused assaulted the injured. Admittedly, the name of the present applicant is stated not only by the injured but by the other witnesses also. The statements of the witnesses are also recorded under Section 164 of Cr.P.C. As far as the incident that the present applicant has taken or abducted the informant and other prosecution witnesses is not supported by the witnesses in their 164 statement. It reveals that the statement under Section 18 of the MCOC Act i.e. confessional statement of the present applicant and the other co-accused are also recorded which shows that the co-accused sat in the car on the say of the present applicant and he is working as a Mechanic and used to repair the car of the co-accused. As far as the statement of the present applicant under Section 18 of the MCOC Act is concerned there is no compliance which is required under Section 18 of the MCOC Act. Moreover, the statement is in

the nature of exculpatory. The statements of the witnesses which are recorded under Section 164 of Cr.P.C. has not supported the prosecution case as far as the abduction is concerned. However, at this stage, the appreciation of the evidence or the nature of the evidence is not to be discussed.

7. To apply the provisions of the MCOC Act, it is necessary to consider the expression “continuing unlawful activity”. In view of Section 2(1)(d) of the MCOC Act, activities prohibited by law for the time being in force 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. The Stress is on the unlawful activities committed by the organized crime syndicate.

8. Section 2(1)(f) of the MCOC Act defines “organized crime syndicate” means a group of two or more persons who, acting singly or collectively, as a syndicate or a gang indulged in activities of organized crime.

9. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That 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. The definition of continuing unlawful activity is defined in Section 2(1)(d) which means that an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an 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 period of ten years and that court has taken cognizance of such offence.

10. 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 e) in respect of which more than one charge-sheet have been filed before a competent court.

11. Thus, Section 2(1)(d) of the MCOC Act defines "continuing unlawful activity" set down a period of ten years within which more than one chargesheets have to be filed. 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 either 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.

12. Section 18 of the MCOC Act deals with the recording of confessions during investigation and procedure which is to be followed. There is no bar to record a statement under Section 18 of the MCOC Act prior to the sanction under Section 23(2) of the MCOC Act. The confession under Section 18 of the MCOC Act are admissible against the accused and substantive evidence. Substantive evidence would not mean that it should be treated automatically as substantive evidence. The quality of the evidence is important. If confessional statement made voluntarily and while recording the same, post confessional statement and formalities are complied. Such evidence in the nature of confessional statements is acceptable. As far as this compliance is concerned which is absent in the present case.

13. The Maharashtra Control of Organized Crime Act 1999, as its long title indicates, is “an Act to make special provisions for the prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto”. The statement of objects and reasons

contains the reasons which constituted the foundation for the legislature to step in: Firstly, organized crime which is in existence for some years poses a serious threat to society; Secondly, organized crime is not confined by national boundaries; Thirdly, organized crime is fuelled by illegal wealth generated by contract killing extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities; Fourthly, the illegal wealth and black money generated by organized crime pose adverse effects on the economy; Fifthly, organized crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries; Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organized crime; and Seventhly, the special law was enacted with "stringent and deterrent provisions" including in certain circumstances, the power to intercept wire, electronic or oral communication.

14. In the light of the above, if facts of the present case are taken into consideration, admittedly, the several offences are registered against the applicant but the same are in his individual capacity. There is nothing on record to show that by committing the said offences he has either generated illegal wealth by way of committing such type of crimes or his association with the other co-accused. There is no material to show that the existing legal

framework work and procedural law are inadequate to deal with the present applicant. Except the present crime, there are other offences registered against the present applicant which are in an individual capacity and there is nothing on record to show that these offences are committed by him to gain illegal wealth.

15. For enabling the court to exercise its discretion in favour of a person the accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an offence of organized crime. The satisfaction that the accused is not guilty is to be on the basis that there are reasonable grounds for believing that the accused is not guilty. The phrase "reasonable ground" is not similar to the sufficient grounds.

16. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of ***Ranjitsing Brahmajeetsing Sharma vs. State of Mah. and anr, [2005 ALL MR (Cri) 1538 (SC)]*** held that the restriction imposed by Section 21(4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a

manner so as to make the grant of bail impossible. It is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Hon'ble Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provisions and what is required is that the satisfaction that there are reasonable grounds for believing the accused to be not guilty. The phrase "reasonable grounds" should not be confused with the phrase "sufficient grounds". It cannot be lost sight of the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Hon'ble Apex Court has observed in the case cited supra that it is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

17. In the light of the above principles, if facts in the present case are considered, admittedly, there are several offences are registered against the present applicant but the said offences are registered in his individual capacity. As far as his association with the other members of the organized crimes are concerned there is no material to show that he had committed the offence as a member of organized crime syndicate for the pecuniary gain. The confessional statement of the present applicant is also exculpatory in nature. Thus, the investigation papers nowhere discloses that his association with the other members of the organized crime syndicate or he has committed any offence to gain economic or pecuniary benefits or other advantages for himself or any other reasons.

18. Thus, there is reasonable grounds to hold that applicability of the MCOC is doubtful. At this stage, the applicant has made out a case for grant of bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant - Mr. Sumit s/o Rajkumar Thakur in connection with Crime No.806/2023 registered with Jaripatka Police Station, Nagpur for the offences punishable under Sections 364, 397, 294 of the Indian Penal Code and under Section 3/25 of the

Arms Act and under Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999, be released on bail, on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station twice in a month i.e. 1st and 15th day of every month, till culmination of the trial and shall cooperate with the investigating agency.

(iv) The applicant shall not leave the jurisdiction of District Court, Nagpur without prior permission of the said Court.

(v) The applicant shall not indulge himself in similar type of the activities.

(vi) The applicant not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(vii) The contravention of any of the condition would lead to the cancellation of bail.

19. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*