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

CRIMINAL APPLICATION (BA) NO.1083/2024
Satish s/o Gauri Nakke
..vs..
State of Maharashtra, through PSO Kapil Nagar Police Station, Nagpur

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

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Shri R.K.Tiwari, Counsel for the Applicant.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri Anant Ghongre, Additional Public Prosecutor for the State.

CORAM	:	URMILA JOSHI-PHALKE, J.
CLOSED ON	:	16/04/2025
PRONOUNCED ON	:	25/04/2025

1. By this application, being moved under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, the applicant seeks regular bail in connection with Crime No.44/2024 registered with the non-applicant/police station for offences punishable under Sections 302, 120-B, 201, and 203 read with 34 of the IPC read with 135 of the Maharashtra Police Act and Section 3(1)(i), (ii), 3(2), and 3(4) of The Maharashtra Control of Organised Crime

Act, 1999 (the MCOC Act) and Section 3(2)(v)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1988 (the SC ST Act).

2. The applicant came to be arrested on 10.3.2024 and since then he is in jail.

3. The applicant is arraigned as accused in the above said crime on the basis of report lodged by Smt.Naina Mangesh Mendhe alleging that Mangesh, (the deceased), her husband, was working in Arhant Traders at Samta Nagar and he was also in the business of bricks and sand. On 2.2.2024, at about 11:30 pm, she was informed that the deceased was assaulted by means of knife and was taken to Mayo Hospital. She immediately rushed to the hospital and found the deceased dead having 3 injuries on his chest. She enquired with Ankit @ Ganja Jaynag Chauhan who was also working with the deceased and she came to know that co-accused Chota Dattu @ Rahul Ramesh Ramteke demanded money from the deceased for

consuming liquor to which the deceased refused to give the money and, therefore, said Chota Dattu assaulted him by means of knife. Friends of the deceased tried to intervene, but due to the assault the deceased fell down. On the basis of the said report, the police registered the crime.

4. During investigation, it revealed to the investigating officer that co-accused Chota Dattu was working with the applicant and they have formed a gang and the applicant is the leader of the said gang. The applicant and the other accused being members of the organized crime syndicate were involved in various criminal activities and, in pursuance of the common object, the applicant and the other members have committed various offences. The applicant, who is the gang leader, hatched conspiracy to eliminate the deceased. The deceased was also involved in gambling/betting and co-accused Mohd.Bilal was also involved in the said business and expressed his desire to the deceased to work along

with him for which the deceased denied. Therefore, with the assistance of the applicant and other co-accused, they hatched the conspiracy and committed murder of the deceased. Therefore, investigating officer forwarded a proposal for applying the provisions of the MCOC Act. After due approval and sanction, the provisions are applied.

5. Learned counsel Shri R.K.Tiwari for the applicant submitted that the present application is filed on the ground that as far as the crime is concerned, the applicant is not at all involved in commission of murder of the deceased. Merely because co-accused Chota Dattu is working with the applicant, he is arraigned as an accused. There was no previous enmity between the applicant and the deceased. They were also not working in the said business. Though there are criminal antecedents against the applicant, the said offences are registered against him in individual capacity. As far as involvement of the

applicant in criminal conspiracy is concerned, there is no material to connect him with the said conspiracy. The CDRs are also not sufficient to show that the applicant was part of the said conspiracy. Now, investigation is already completed and chargesheet is already filed. Further incarceration of the applicant is not required. The provisions of the MCOC Act are not applicable and, therefore, bar under Section 21(4) of the MCOC Act is not attracted. He, therefore, prays that the applicant be released on bail.

6. In support of his contentions, learned counsel for the applicant placed reliance on the decisions of this Court in **Criminal Application (BA) No.435/2024 with connected application (Akash s/o Dharmpal Tasare vs. State of Maharashtra, through Police Station Officer, Wadli Police Station, Nagpur) decided on 8.7.2024** and **Criminal Application (BA) No.843/2023 (Shahrukh alias Kasai Shaikh Akram vs. State of Maharashtra, thr.PSO PS**

Nandanwan, Nagpur) decided on 22.12.2023.

7. *Per contra,* learned Public Prosecutor Shri D.V.Chauhan for the State strongly opposed the application and submitted that the applicant is the leader of the organized crime syndicate. In all, seven offences are registered against the applicant, out of which four offences are along with the other members of the organized crime syndicate. The report submitted by the investigating officer shows that the applicant is involved in criminal activities by committing grievous offences against the persons and property of the citizens by forming unlawful assembly and committing the murder. His involvement is also in a wrongful restraint, mischief to cause damage to the property, forgery of valuable security, forgery for the purpose of cheating, attempt to commit murder, voluntarily causing hurt by dangerous weapons, and extortion by putting person in fear of death or grievous hurt. It is revealed that in last 10 years, 11 offences have been lodged

against the applicant for which punishment for more than 3 years has been provided. These series of the acts committed by the applicant sufficiently show that regular provisions proved to be inadequate to curb the activities of the applicant and, therefore, the provisions of the Special Act were applied. He submitted that as far as the involvement of the applicant in criminal conspiracy is concerned, conspiracy is always hatched in secrecy and direct evidence would not be available to ascertain involvement of the applicant and, therefore, the prosecution has to rely upon circumstantial evidence. The statement of Ankit @ Ganja Jaynag Chauhan, alleged to be eyewitness of the said incident, shows involvement of co-accused Chota Dattu. Initially, the incident occurred between the deceased and Chota Dattu and, thereafter, at about 11:00 pm to 11:15 pm, Chota Dattu came along with Irsad Ali, Rishabh Chafekar, and Harshdeep @ Warlya Nagrare, and when they were talking, the deceased was taken by Chota Dattu at a side and assaulted by means of knife. The statement of Anand @ Banti Ramesh Nayar also discloses that the deceased was involved in a gambling/betting business and was doing the said work at Teka Naka. Co-accused Mohd.Bilal was also intending to work along with the deceased from the Teka Naka for which the deceased denied and, therefore, with the help of the applicant and his brother, the deceased was eliminated. As far as criminal conspiracy is concerned, tower location map was noted nearby the spot of the incident i.e. hardly one kilometer away. There are constant calls between the applicant and the other co-accused on the day of the incident. The alleged incident took place at about 9:00 pm. Prior to that and after the incident, on 2.2.2024, there were calls between the applicant and assailants Chota Dattu; brother Santosh of the applicant and assailant Chota Dattu; and the applicant and co-accused Mohd.Bilal. It is not a case of stray calls between them, but several calls were exchanged between the applicant and other co-accused prior to the incident and after the incident. Thus, the connection between the applicant and other co-accused is established by the prosecution. At this stage, the above said material is sufficient to show *prima facie* case against the applicant. He also invited my attention to the memorandum statement of the co-accused wherein he has disclosed the involvement of the applicant in the conspiracy. He submitted that information given by co-accused Chota Dattu was not known to the investigating officer. First time, this fact was discovered due to the memorandum statement of the co-accused. The statements of Mohd.Shubrati and Sanjay Meshram also show the association of the applicant with the other co-accused. Thus, considering all these materials, bar under Section 21(4) of the MCOC Act will attract and, therefore, the application deserves to be rejected.

8. In support of his contentions, learned Public Prosecutor for the State placed reliance on following decisions:

1. State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr, reported in 2011(5) Mh.L.J. 386;

2. Abhishek vs. State of Maharashtra and ors, reported in (2022)8 SCC 282;

3. Kavitha Lankesh vs. State of Karnataka and ors, reported in (2022)12 SCC 753;

4. Subramanya vs. State of Karnataka, reported in (2023)11 SCC 255;

5. Mehboob Ali and ors vs. State of Rajasthan, reported in (2016)14 SCC 640, and

6. Sidhartha Vashisht @ Manu Sharma vs. State (NCT) of Delhi), reported in AIR (2010) SC 2352.

On the basis of the above said material, learned Public Prosecutor for the State vehemently submitted that at this stage, evaluation of the evidence is not required. What is to be seen, whether there is a *prima facie* material to connect the applicant with the alleged incident.

9. 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. The illegal wealth and black money generated by the organized crime being very huge, it has had serious adverse effect 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 immediate need to curb their activities.

10. 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. Government, therefore, decided to enact a special law with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organised crime. It is the purpose of this Act to achieve there objects.

11. 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.

12. 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.

13. 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 chargesheets have been filed before a competent court within the preceding the period of ten years and that court has taken cognizance of

such offence.

14. 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.

15. 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.

16. By giving hypothetical examples, it is held that what is contemplated under Section 2(1)(d) of the MCOC Act is that activities prohibited by law for the time being in force which are 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. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate.

17. 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.

18. In the light of the above well settled legal position and provisions enumerated therein, if the facts of the present cases and the material collected during investigation are considered, it reveals from the statements of the witnesses that the deceased was dealing with the

work of betting and gambling. Similarly, co-accused Mohd.Bilal was intending to have partnership with the deceased in the said business. The statements of witnesses including statements of Mohd.Shubrati and Sanjay Meshram disclose the association of the applicant with the other co-accused. It further reveals from the investigation papers that the applicant is involved in various criminal activities since 2008 as the offences are registered against him since 2008. The nature of the offences registered against the applicant are in the nature of causing voluntary hurt, criminal trespass, criminal intimidation, preparing for assault, and attempt to murder and in all seven offences are registered against the applicant. The chart of the criminal antecedents against the applicant is as follows:

1. Crime No.236/2008 under Sections 143, 147, 148, 341, 307, and 302 read with 149 of the IPC;

2. Crime No.41/2013 under Sections 324 of the IPC;

3. Crime No.526/2014 under Sections 324 and 323 read with 34 of the IPC;

4. Crime No.668/2016 under Sections 354 341 506-B read with 34 of the IPC;

5. Crime No.414/2017 under Sections 324 and 504 read with 34 of the IPC;

6. Crime No.978/2019 under Sections 143, 147, 148, 353, 332, 341, and 337 read with 149 of the IPC;

7. Crime No.376/2021 under Sections 307 and 323 read with 34 of the IPC, and

8. Crime No.44/2024 (present crime) under Sections 302, 120-B, 201, and 203 read with 34 of the IPC.

The crime chart further shows that in Crime No.526/2014 the applicant is chargesheeted with co-accused Santosh @ Papa Gauri Nakke. In Crime Nos.668/2016 and 414/2017 he is chargesheeted along with said Santosh Nakke.

19. The statement of Ankit @ Ganja Jaynag Chauhan discloses the involvement of co-accused with the alleged offence.

20. The statement of Anand @ Banti Ramesh Nayar also shows involvement of co-accused Mohd.Bilal and the allegations against the present applicant are that prior to some days there was threatening by co-accused Chota Dattu on the say of the present applicant.

21. During investigation, the name of the applicant reveals from the statements of witnesses and the association of the applicant with the other co-accused.

22. Thus, investigation papers show association of the applicant with the co-accused.

23. This court in the case of **Gulab Jethanand Khemnani vs. State of Maharashtra** *supra* observed that 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. It has been further 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.

24. While granting sanction under the provisions of MCOC Act, competent authority had considered various crime details registered against the applicant who is gang leader and it reveals that since 2008 till 2024 total seven offences are registered against the applicant. Co-accused Chota Dattu was working with the applicant who has eliminated the deceased. The statements of witnesses show that co-accused Mohd.Bilal was interested in having partnership with the deceased to which the deceased denied and, therefore, he was eliminated. The statements

of the witnesses further disclose association of the applicant with the other co-accused. As far as involvement of the applicant in criminal conspiracy is concerned, admittedly, no direct evidence would be available and in that circumstances, the prosecution has to rely upon some circumstances to unveil the involvement of the applicant in the alleged offence.

25. 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** 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.

26. A bare perusal of the statements of the witnesses shows involvement of the applicant in the conspiracy.

27. As observed by the Full Bench decision of this Court in the case of **State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr** *supra*, ingredients will be necessary to make out case of an organized crime (i) that there has to be a continuing unlawful activities; (ii) that such an activity will have to be by an individual, singly or jointly; (iii) that such an activity is either by a member of an organised crime syndicate or on behalf of such

syndicate; (iv) that there has to be use of violence or threat of violence or intimidation or coercion or other unlawful means; (v) that such an activity has to be with an objective of gaining pecuniary benefits or gaining undue economic or other advantage for the person who undertakes such an activity or any other person or promoting insurgency.

28. The purpose behind the provisions also assumes the importance. The purpose behind enacting the MCOC Act was to curb the activities of the organised crime syndicates or gangs. The perusal of the Preamble and the Statement of Objects and Reasons and Preface does not lead to any narrower meaning that MCOC Act has been enacted only for the purpose of curbing activities which involve pecuniary gains or undue economic advantages. The mischief which is sought to be cured by enactment of MCOC Act is to curb and control menace of organised crime. The law has been enacted with the hope that the elements spread by the organised crime in the Society can

be controlled to a great extent and for minimizing the fear spread in the society. If a narrower meaning as sought to be placed is accepted, it will frustrate the object.

29. 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.

30. In the case of **Abhishek vs. State of Maharashtra and ors** *supra,* also the Hon'ble Apex Court considered that a bare look at clause (e) of Section 2(1) of MCOC Act makes it clear that 'organised crime' means any unlawful activity by an individual singly or jointly, either as a member of 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.

31. Applying these principles, it can be seen that various offences are registered against the applicant since 2008 from which it reveals the existing legal frame work i.e. the penal and procedural law was found to be inadequate to control the activities of the applicant. Looking to the object and purpose of this enactment, as observed by the Full Bench of this Court in the case of **State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr** *supra,* the expression 'other advantage' cannot be read in a restrictive manner and is required to be given its full effect. This Court held that there could be advantage to a person committing a crime which may not be directly leading to pecuniary advantage or benefit but could be of getting a strong hold or supremacy in the society or even in the syndicate itself. As noticed above, the purpose of this enactment is to be kept in view while interpreting any expression therein and object of the provisions.

32. As observed earlier, the provisions of the MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized crime syndicate or gang, the statements and the objects of the Act to control illegal activities of the said gangs. 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 applicants have not made out the case for grant of bail because in view of 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. Sub-section (4) of Section 21 of the MCOC Act mandates that it is incumbent on the part of the court before granting bail to any persons accused of an offence punishable under the MCOC Act and there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence

while on bail.

33. As observed by the Hon'ble Apex Court in **Criminal Appeal No.1689/2012 (The State of Maharashtra vs. Vishwanath Maranna Shetty) decided on 19.10.2012**, while dealing with a special statute like MCOC Act having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed

of the requisite *mens rea*. It is further observed by the Hon'ble Apex Court that while dealing with application for grant of bail, in addition to broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind.

34. Thus, satisfaction contemplated in clauses (a) and (b) of sub Section (4) of Section 21 of the MCOC Act, regarding accused being not guilty, has to be based on reasonable grounds. Though expression "reasonable grounds" has not been defined, it requires something more than a *prima facie* ground.

35. Considering the entire material on record, there is a *prima facie* material to show that the applicant is connected with the organized crime syndicate and is involved in the conspiracy as well as the actual incident.

36. To grant bail to accused, the court has to come to conclusion that accused is not guilty of offence on the

basis of "reasonable grounds".

37. As observed, the expression "reasonable ground" has not been defined in the MCOC Act, but it connotes substantial probable causes for believing that accused is not guilty of offence he is charged with. The reasonable belief on the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that accused is not guilty of alleged crime. Thus, recording of satisfaction on these aspects is *sine qua non* for grant of bail.

38. In the light of the above well settled legal position, at this stage, there is a sufficient material on record to hold that involvement of the applicant reveals. It is difficult to come to conclusion that he is not guilty of the offence.

39. The evidence available on record *prima facie* discloses complicity of the applicants in assisting the members of the crime syndicate to commit the organized

crime. In view of the same, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!