



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

CRIMINAL APPLICATION (APPLN) NO. 111 OF 2024

State of Maharashtra
Through Assistant Commissioner of
Police Kotwali Division, Nagpur. **APPLICANT**

Versus

1. Mohd. Shakil Mohd. Ali,
Aged 25 Years,
R/o. Bajeriya Chowk, Dist. Nagpur.
2. Mohd. Rizwan @ Tedi Hasan Ansari,
Aged 25 Years,
R/o. Lodhipura, Behind Lal School,
Dist. Nagpur.
3. Ritik Rajkumar Gaur,
Aged 26 Years.
R/o. Bajeriya Chowk, Dist. Nagpur.
4. Faizan Khan @ Raj Kalya S/o Abdul
Rahid Khan,
Aged 20 Years,
R/o. Mirza Galli, Khadan,
Dist. Nagpur.

NON-APPLICANTS

Mr. M.J. Khan, APP for the Applicant/State.
Mr. S.S. Ali, Advocate a/w Mr. Y.J. Sheikh, Advocate for the
Non-applicant No.4.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 25th JULY, 2025.

ORAL JUDGMENT :-

1. Despite the service of notice and execution of the Bailable Warrant, the Non-applicant Nos. 1 to 3 failed to appear before this Court.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned APP for the Applicant/State and learned Counsel for the Non-applicant No.4.

3. The present Application is filed by the State seeking cancellation of bail granted to the present Non-applicant Nos. 2 to 4 in connection with Crime No.144/2023 registered under Sections 386, 387, 504, 506(2) r/w Section 34 of the Indian Penal Code (for short "IPC"). The crime was registered against the present Non-applicants on the basis of the report lodged by Tahir Hussain Mohd. Salim on an allegation that on 16.07.2019 at around 5.30. p.m, when he was sitting in Raja Restaurant and Bhojnalaya, the present Non-applicants came there holding swords in their hands and threatened him and forcefully

obtained the amount of Rs.3,000/- and he immediately lodged the report vide Crime No.352/2019 under Sections 395, 452, 294 and 427 of IPC alongwith Sections 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act. Subsequent to the said incident, on 17.04.2023 at around 08.30. p.m., when he was sitting in his hotel, the present Non-applicants again came to his hotel and forcefully extorted the money i.e. Rs. 5,000/- from him by threatening him and insisted him to close the hotel. On the basis of the said report Police have registered the crime against the present Non-applicants.

4. After registration of the crime, the Non-applicants approached to the Judicial Magistrate First Class, Nagpur for grant of bail. The Judicial Magistrate First Class, Nagpur has considered the application for grant of bail and they were released on bail on executing P.R. Bond of Rs.15,000/- each with one solvent surety in the like amount. The condition imposed on them is that they shall attend the Court at least once in a month/three months till the conclusion of the trial and also directed that if they commit breach of any of the condition or misuse the liberty the prosecution shall be at liberty to move for cancellation of bail. The Non-applicant No.4 also

approached to the Judicial Magistrate First Class, Nagpur for grant of bail and the Judicial Magistrate First Class Court No.1, Nagpur granted bail by order dated 17.05.2023, wherein also the condition was imposed that he shall attend the Court at least once in a month/three months till the conclusion of the trial, failing which he shall be called upon to pay the penalty amount specified in the bail bonds. He was also directed to attend the concerned Police Station once in a week on every Saturday without fail.

5. Now, the present Application is filed by the State on the ground that after releasing these Non-applicants on bail they have misused the liberty and committed the similar type of offence in respect of which Crime No. 406/2023 was registered under Sections 394, 504 r/w 34 of IPC. The Crime No. 406/2023 was registered on the basis of a report lodged by Akash Nandkishor Shukla, wherein it is alleged that the present Non-applicants approached to him and forcefully snatched his golden chain as well as the cash amount of Rs. 1 Lakh and threatened him and left the place. Another Crime No. 603/2023 was also registered under Section 294, 506(2), 323 r/w 34 of IPC and under Sections 4 and 25 of the Arms Act. Thus, the

contention of the State is that after releasing the said Non-applicants on bail they misused the liberty, and therefore, the Investigating Officer has sent the proposal to the Superior Officers considering the continuous involvement of the present Non-applicants in the illegal activities for invoking the provisions of Maharashtra Control of Organized Crime Act, 1999 (for short “the MCOC Act”) and while granting approval under Section 23(1)(a) of the MCOC Act, the Superior Authority of the Investigating Agency i.e. the Additional Commissioner of Police North Region Nagpur City had considered and has gone through the proposal and documents submitted in support of the proposal by the Police Inspector, Police Station Ganeshpeth, Nagpur for addition of Sections 3(1) (ii), 3(2), 3(4), 4 of the MCOC Act with the Crime No. 144/2023 of Police Station Ganeshpeth for the offences punishable under Sections 386, 387, 504, 506(B) r/w Section 34 of IPC. The sanctioning Authority has considered that it has gone through the papers on the basis of record and evidence with respect to the offences more than one charge-sheet has been filed against them in which offences having prescribed punishment of 3 years or more have been considered and

cognizance has been taken by the Competent Authority. According to the record it seems that ultimate intention of the accused persons is to gain pecuniary benefit establishing supremacy in the locality and other advantage by committing such serious offences. The preventive actions taken against them have failed to produce them and on recording the satisfaction that there is a crime syndicate and enough material evidence and records to give prior approval for investigation under the provisions of Sections 3(1)(ii), 3(2), 3(4), 4 of the MCOC Act, the approval was granted to investigate the matter to the Investigation Officer by invoking the provisions of the MCOC Act, and therefore, the provisions of the MCOC Act are invoked and the application was filed by the State for cancellation of bail before the District Judge-1 and Additional Sessions Judge, Nagpur. The learned District Judge-1, after hearing both the sides rejected the application of the State and hence this Application by invoking Section 439(2) of the Code of Criminal Procedure has been filed.

6. Heard learned APP for the Applicant/State. He reiterated the said contention and submitted that the Application is filed mainly on two grounds that the

Non-applicants have misused the liberty which was granted to them and other ground raised is the Application is the special provision under the Special Act i.e. MCOC Act. He also invited my attention towards Crime Chart, wherein in all 16 offences are registered against the Non-applicant No.4/Faizan Khan @ Raj Kalya S/o Abdul Rahid Khan, there are in all 10 offences are registered against the Non-applicant No.3/Ritik Rajkumar Gaur, there are in all 6 offences are registered against the Non-applicant No.2/Mohd. Rizwan @ Tedi Hasan Ansari and there are in all 11 offences are registered against the Non-applicant No.1/Mohd. Shakil Mohd. Ali.

7. He further invited my attention towards the fact that most of the offences are similar in nature i.e. under Sections 395, 452, 294, 427 of IPC which are committed for the pecuniary gain. Some offences are registered under Sections 385, 387, 341 of IPC, which are also committed for the pecuniary gain. He also submitted that considering the criteria which is required that more than one crime the charge-sheet is already filed against the present Non-applicants their involvement are continuously in the illegal activities for the pecuniary gain, the Authority has granted approval to

investigate the matter under Section 23(1) of the MCOC Act, and therefore, the investigation has to be carried out. Unless the Non-applicants are taken into custody the investigation regarding their unlawful and illegal activities cannot be carried out, and therefore, the learned Sessions Judge ought to have considered this aspect while considering the application filed by the State but the learned Sessions Judge has ignored the same and erroneously rejected the application.

8. In support of his contention he placed reliance on the judgment passed by this Court in ***Criminal Application (APL) No. 7/2016, Vijendra Molchand Kuril Vs. State of Maharashtra and Anr., decided on 12.09.2017***, and submitted that in the similar facts and circumstances this Court has considered the application of the State for cancellation of bail and cancelled the bail. He submitted that, as the provisions of the special enactment Act applied against the present Non-applicants, and therefore, the investigation is to be carried out so as to ascertain the involvement of the present Non-applicants in the offences which are committed by them by way of organized crime syndicate by forming a gang, and therefore, pressed for cancellation of bail.

9. Learned Counsel for the Non-applicant No.4 has denied the said contentions and submitted that there was no such condition imposed as to the liberty granted to the Non-applicant No.4. He submitted that, no such condition or no such liberty was granted to the State to apply for cancellation of bail, and therefore, the contention of the State that as he is involved in various offences and after he is released on bail his liberty is to be cancelled and bail deserves to be rejected.

10. On going through the entire investigation papers and the facts of the case it reveals that there is no dispute to the fact that several offences are registered against the present Non-applicants and most of the offences are registered showing that they have formed the unlawful assembly having common object, they have committed the offences like dacoity and extortion. Two offences are registered against the Non-applicant No.1/Mohd. Shakil Mohd. Ali under Sections 394, 452, 294, 427 and 385, 387, 441 which sufficiently shows that these offences are committed by him for pecuniary gain. Against the Non-applicant No.2/Mohd. Rizwan @ Tedi Hasan Ansari also two offences are registered which shows that two offences vide Crime Nos. 192/2015, 158/2021 and 144/2023 are registered

alleging that he has extorted the amount from various businessman. Thus, these offences are committed for pecuniary gain. The Non-applicant No.3/Ritik Rajkumar Gaur is also involved in the offences punishable under Sections like 385, 386, 387 of IPC, the Crime Nos. 144/2023, 334/2023 and 122/2021 are registered under Sections 385, 386, 387, 341, 504, 506 r/w Section 34 of IPC. Against the Non-applicant No.4/Faizan Khan @ Raj Kalya S/o Abdul Rahid Khan there are in all 16 offences registered against him and out of them Crime Nos. 273/2016, 352/2019, 372/2021 and 144/2023 are the offences which are registered in the nature of pecuniary gain. These offences are committed by these Non-applicants for the pecuniary gain. Thus, considering the Crime Chart it reveals that the involvement of the present Non-applicants are continuously in the illegal activities which are committed for the pecuniary gain.

11. After considering the grounds raised in the Application by the State it reveals that after they are released on bail in Crime No. 144/2023, they have misused the liberty and their involvement reveals in the subsequent offence in Crime Nos.105/2023, 406/2023 and 603/2023. Thus, the involvement

of the present Non-applicants is continuously apparent from the said Crime Chart.

12. After hearing learned APP for the State and learned Counsel for the Non-applicant No. 4, the issue that once the bail is granted for the offences punishable under the “ordinarily law” i.e. under the Indian Penal Code and subsequently, the provisions of Sections 3 and 4 of the MCOC Act, are added and applied, whether the bail earlier granted can be cancelled or not, is not in *res integra* in view of the law laid down by this Court in the case of ***Sarang Arvind Goswamy Vs. State of Maharashtra, reported in 2005(3) Mh.L.J. 774.***

13. In ***Sarang Arvind Goswamy's*** case, accused Sarang was arrested in connection with Crime No.212/2004 for the offences punishable under the Indian Penal Code. Subsequently, he was released on bail. Subsequent to his release on bail, the provisions of special enactment, namely MCOC Act, were invoked against said Sarang. After such invocation, an application was moved by the prosecution for cancellation of bail on the assertion that as the provisions of special enactment have been applied, earlier bail cannot be continued and the

same is required to be cancelled in view of the stringent provisions of Section 21 of the MCOC Act.

14. The Sessions Court at Pune cancelled the bail granted earlier in favour of accused Sarang that gave rise filing of Criminal Application No.2129/2005 by Sarang before this Court and this Court, after considering the entire law on the said issue, found that the bail, which was granted earlier in favour of applicant Sarang, was only in respect of the offences punishable under the relevant Sections of the Indian Penal Code. However, subsequently, the stringent provisions of the MCOC Act were applied. Therefore, the order was upheld cancelling the bail of Sarang.

15. In the present case also, at the time when the Non-applicants were released on bail, the conditions were imposed that they should not misuse the liberty and liberty was granted to the State to approach the Court for cancellation of bail, as far as the Non-applicant No.4 is concerned, this condition was not imposed while granting bail. It is the implied condition that the Non-applicant No.4 shall not indulge in the similar type of activities if he is released on bail and shall not

misuse the liberty granted to him.

16. The investigation was continued in the earlier offence and during the investigation, the involvement of the present Non-applicants in continuous illegal activities by forming a gang was revealed, and therefore, he applied for the approval and the approval was granted by the Additional Commissioner of Police, North Region Nagpur City. While granting the approval, the Additional Commissioner of Police, North Region Nagpur City, has considered the Crime Chart and the nature of the crime and by observing that on his satisfaction, by granting an approval to investigate the matter by applying the provisions of the MCOC Act and accordingly the approval was granted by the Competent Authority.

17. In my view, the prosecution has rightly applied for cancellation of bail by approaching to the Court by moving an application under Section 439(2) of the Code of Criminal Procedure on assertion that the provisions of the MCOC Act have been applied against the present Non-applicants. The ground that the Non-applicants have misused the liberty is also made out by the State. As a consequence of which, the bail

granted in favour of the Non-applicants, relating to the offences under the Indian Penal Code, will be of no avail. In view of invocation of the provisions of the special enactment, the prosecution was having a right to take the Non-applicants into custody in relation to the newly registered offences under the MCOC Act and as observed by this Court in *Sarang Arvind Goswamy's* case cited supra, the Non-applicants can be released on bail only if the Non-applicants were to satisfy rigours of the provisions of the special enactment.

18. In view of the provisions of the MCOC Act, being made against the present Non-applicants, in my view, learned Judge of the Court below has committed an error by rejecting the application, and therefore, the application of the State for cancelling the bail deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. The Application is **allowed**.
- ii. The bail granted to the present Non-applicant Nos. 1 to 4 by the Judicial Magistrate First Class Court No.1, Nagpur by orders dated 24.04.2023 and 17.05.2023 are hereby cancelled.

- iii. Issue Non Bailable Warrants (N.B.W.) against the Non-applicant Nos. 1, 2 and 4.
- iv. The Non-applicant No.3, is already behind bars. The Investigating Officer is at liberty to take him into custody by following due process of law.

19. Rule is made absolute in the above terms.

20. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte