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

CRIMINAL APPLICATION (BA) NO.1250/2024

Deepak s/o Nandkishore Verma

..vs..

State of Maharashtra, through PSO, MIDC 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 Subodh Dharmadhikari, Senior Counsel assisted by Shri Chinmay Dharmadhikari for the Applicant.
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri N.B.Jawade, Additional Public Prosecutor for the State.

CORAM	: URMILA JOSHI-PHALKE, J.
CLOSED ON	: 28/04/2025
PRONOUNCED ON	: 05/05/2025

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.831/2023 registered with the non-applicant/police station for offences punishable under Sections 143, 144, 147, 148, 302, 307, 120-B, and 201 read with 149 of the IPC and under Section 3(1)(ii), 3(2), and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (the

MCOC Act) read with Sections 4 and 25 of the Arms Act.

2. The applicant came to be arrested on 17.8.2023 and since then he is in jail.

3. The crime is registered on the basis of report lodged by Ravi Jaiswar alleging that on 16.8.2023, at about 8:30 pm, he along with deceased Rakesh Mishra had been to pan stall at Rajiv Nagar Main Road. At about 9:00 pm to 9:30 pm, one Arjun Dandekar along with 4-5 persons came and assaulted the deceased and the informant by means of swords and, thereafter, fled away. As per the prosecution case, on account of previous dispute between the deceased and the applicant, conspiracy was hatched and the applicant hired other co-accused and eliminated the deceased. On the basis of the said report, the police registered the crime against the applicant and other co-accused. During investigation, it revealed that co-accused Ganesh Dandekar is gang leader and the applicant is member of the “organized crime syndicate” and in

furtherance of the common object of the said syndicate, they eliminated the deceased. On the basis of investigation, the applicant was arraigned as an accused and the proposal was sent for approval in view of Section 23(1) of the MCOC Act and sanction was subsequently obtained in view of section 23(2) of the MCOC Act.

4. Heard learned Senior Counsel Shri Subodh Dharmadhikari for the applicant and learned Public Prosecutor Shri D.V.Chauhan for the State.

5. Learned Senior Counsel for the applicant submitted that the applicant is arraigned as an accused with the baseless allegations. As far as his nexus with the co-accused, who is leader of alleged “organized crime syndicate”, is concerned, investigation papers nowhere establish the link between both of them. As far as previous offence is concerned, only one offence is registered against the applicant i.e. also under Sections 294, 506, and 427 of the IPC. It is alleged by the prosecution that there was

communication between the applicant and other co-accused. However, the sim-card, alleged to be used by the applicant, having No.7030510429, is not in the name of the applicant. On the basis of the statement of one Shridhar Ratiram Naradwar, the said allegation is levelled. The statement of this witness is not believable as after he lost the mobile phone, he never made any complaint to the police station. Even, after he got knowledge that the applicant is using the said sim-card, he has not made any complaint against the applicant to any police station. The prosecution further placed reliance on various statements from which it revealed that presence of the applicant was not at the spot of the incident. The calls to the mobile phone of co-accused Ganesh is from mobile No.7030510429 which is not of the applicant. The statements of the other witnesses also not sufficient to connect the applicant with the alleged offence. The applicant is also not named in the FIR. After the incident, the assailants alleged to be fled away in vehicle. The said vehicle's details are not investigated. As per the statement of one Arvind Luhure, call is made to the applicant which is not reflected in the CDRs. The statement of the applicant, as to the recovery of the mobile phone, is also not material evidence. As per the FIR, motive was entirely different. Now, investigation is completed and chargesheet is filed. Further detention of the applicant is not required. In view of that, he be released on bail. He further submitted as far as crime chart, filed on record along with reply, is concerned, the applicant is already acquitted from all offences. Thus, no nexus is established between the applicant and other co-accused.

6. In support of his contentions, learned Senior Counsel for the applicant placed reliance on following decisions:

> **1. Perumal Raja alias Perumal vs. State, rep. By Inspector of Police, reported in 20204 SCC OnLine SC 12,** and
>
> **2. Jayshree Kababar vs. State of Maharashtra and ors, reported in 2025 SCC OnLine SC 13.**

7. *Per contra*, learned Public Prosecutor for the State strongly opposed the application and submitted that the applicant is member of the "organized crime syndicate". Previously, 22 offences are registered against him. The nature of the offence shows that offences are committed against the person and property for pecuniary gain. The investigation papers show that the applicant is involved in criminal activities by committing grievous offences. His involvement is also in offences committed for pecuniary gain. As far as 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 statements of Akash @ Rahul Singh, Raju Yede, Sachin Yadav, Rajiv Shah, Shridhar Naradwar, and Aatish Shende sufficiently show his involvement in the alleged offence. The CDRs also show his communication with Ganesh prior

to the incident and after the incident. The CDRs Analysis Chart of the mobile number used by all the accused sufficiently establishes that there was constant communication between the applicant and the other co-accused at the time of incident and after the incident.

Learned Public Prosecutor submitted that though learned Senior Counsel for the applicant denied the possession of the sim-card bearing No.7030510429, allegedly in the name of Shridhar Naradwar, the statement of the brother of the applicant also shows that the applicant was using the said sim-card and this Chandan Verma, the brother of the applicant, has recharged by paying Rs.100/- from his phone by using PayApp, which is sufficient at this stage to show that it was the applicant who was using the said mobile phone. CDRs Analysis Chart shows on 16.8.2023, i.e. on the day of the incident, from 5:32:56 to 9:28:19, the applicant contacted Ganesh from mobile numbers 7030510429 to 9398620678. The statement of

Raju Yede shows that as he was communicating with the deceased, assaulted by the applicant by calling him in his Bar. All the statements are recorded immediately after the incident and, therefore, there is no reason to disbelieve these witnesses as the statements are promptly recorded and there was no opportunity for the witnesses or investigating agency to create the record. The statement of the brother of the applicant further shows that after arrest of the applicant and other co-accused, on the say of the applicant, he has paid money to the accused persons who are in jail by paying Rs.2000/-. If the applicant is not connected with the said persons, there is no reason for the applicant to pay the money to them. Thus, he submitted that at this stage, the statements of witnesses sufficiently show the connection between the applicant and other co-accused which is sufficient to show *prima facie* case against him.

Learned Public Prosecutor for the State also invited my attention to memorandum statement of co-accused and the applicant and submitted that some facts are discovered from memorandum statement of the accused. Thus, considering all these investigation papers, 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. Sunil Ashok Kondugale vs. State of Maharashtra, reported in 2024 SCC OnLine Bom 1227;

2. Jayshree Kababar vs. State of Maharashtra and ors, reported in 2025 SCC OnLine SC 13, and

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

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 these 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 case and the material collected during investigation are considered, it reveals from the statements of the witnesses that there was previous enmity between the applicant and the deceased. The statements of the witnesses further disclose that the applicant has seen the deceased sitting on the pan stall. Immediately, through one Rahul, information is gathered by him as to the incident. The statements of witnesses further revealed that he informed the information as to whereabouts of the deceased to other co-accused. The statement of one Aatish shows that the brother of the applicant met him and handed over him Rs.10000/- to hand over the same by way of money order to Ganesh, who is assailant, and other two accused. The statement of this witness and statement of

brother of the applicant is consistent on the issue. Further, the statement of Arvind shows that one person by name Rahul approached him, obtained his mobile phone, and called the applicant and he also heard the communication of said Rahul and the applicant who disclosed to him that body is already removed and Rakesh is taken to hospital. The statement of Rahul Meshram also shows that the applicant was using two mobiles and he was working with him. On the day of the incident, he was driving the car of the applicant. On the say of the applicant, he took the vehicle from Raju Nagar Bus Stop towards left on Hinga Road and saw the deceased sitting on the pan stall and again returned to Nagpur. Thereafter, the applicant made phone call to somebody. As the phone was on speaker, he could hear the communication and, thereafter, he removed sim-card from the said phone and kept in his shirt pocket. Thus, statements of these witnesses sufficiently show connection of the applicant and other co-accused.

19. Learned Public Prosecutor for the State, placed on record the CDRs Analysis Chart and Location, which show that on the day of the incident, the applicant was constantly in communication with the other co-accused i.e. Ganesh Dandekar and Arjun Dandekar. Though the said sim-card, having No.7030510429, is not in name of the applicant and allegedly is in the name of Shridhar, whose statement is recorded, learned Senior Counsel for the applicant submitted that as this witness has not made any complaint of losing of his mobile phone, it is not believable. Even, accepting the same, the statement of Rahul, who is working with the applicant, and statement of his own brother Chandan Verma, disclose that the applicant was using the said sim-card. Previous history shows that he was involved in the crime like causing voluntary hurt, attempt to murder, and in all 22 offences are registered against him. Admittedly, he is acquitted from the said charges. Still, criminal history discloses his involvement in various offences. The investigation papers, especially statements of

Rahul Meshram, Afsar Khan, Arvind, Dinesh, and Raju Yede, show his nexus with the present crime as well as with the co-accused. In addition to that CDRs Analysis Report show that accused Ganesh, Arjun, and the applicant are shown to be on the same location at Butibori prior to the incident. The CDRs Analysis Report further shows that on 16.8.2023, i.e. on the day of the incident, the applicant was in contact with Ganesh from 5:32:36 to 21.28:19. Whereas, the alleged incident has taken place at about 9:00 to 9:30 pm i.e. immediately after communication between the applicant and other co-accused.

20. This court in the case of **Gulab Jethanand Khemnani vs. State of Maharashtra, reported in 2007(2) Mh.L.J. (Cri) 538** 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.

21. While granting sanction under the provisions of MCOC Act, competent authority had considered various statements of the witnesses and nexus of the applicant with the "organized crime syndicate" and thereby granted approval as well as sanction.

22. As far as involvement of the applicant in criminal conspiracy is concerned, admittedly, as 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.

23. 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.

24. A bare perusal of the statements of the

witnesses shows involvement of the applicant in the conspiracy.

25. As observed by the Full Bench decision of this Court in the case of **State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya and anr, reported in 2011(5) Mh.L.J. 386**, 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.

26. 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.

27. 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.

28. 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.

29. Applying these principles, it can be seen that there is nexus between the applicant and other co-accused.

30. 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. 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 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. 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.

31. 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.

32. 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.

33. Considering the entire material on record, there is a *prima facie* material to show that there is nexus between the applicant and other members of the "organized crime syndicate" and he is involved in the conspiracy.

34. 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". 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.

35. 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.

36. The evidence available on record *prima facie* discloses complicity of the applicant 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**.

37. Application stands **disposed of**.

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

!! BrWankhede !!