



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (BA) NO.111/2025

1 Patil Vs. State of Maharashtra, through Police Station Officer Koradi Police Station, Tah. & Distt. Nagpur)

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

Court's or Judge's orders

Mr. S.P. Bhandarkar, Advocate for the applicant.

Mr. D.V. Chauhan, Senior Advocate and Public Prosecutor with Ms. T.H. Udeshi,
A.P.P. for the non-applicant/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE ORDER: 14.10.2025.

DATE OF PRONOUNCING THE ORDER: 16.10.2025.

The applicant is arrested in Crime No.50/2023, registered with Koradi Police Station, Tah. and Distt. Nagpur, for the offence punishable under Sections 370, 369, 109, 198, 465, 467, 468, 471 and 120-B read with Section 34 of the Indian Penal Code, Sections 75 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 3(1)(ii), 3(2), 3(4) and 4 of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act").

2. It is the case of prosecution that the applicant is the co-accused in this crime and allegations are made against him that he introduced witness, who was pregnant, to accused No.1 Ayesha Maqbool Khan who is a prime accused and allegedly sold child to Santosh Gangurde and Meena Gangurde. According to the prosecution, Santosh Gangurde and Meena Gangurde have adopted the said child. It is alleged that the accused have committed the offence under Section 370 of the Indian Penal Code and Police invoked the provisions of MCOC Act alleging that the co-accused Shweta Sawale alias Ayesha Maqbool Khan formed the organized crime syndicate and committed various cognizable offences punishable for a period of more than 3 years to gain monetary

benefits as well as other advantages to create terror in the vicinity. There are several other charge-sheets filed against said Shweta @ Ayesha and present applicant, and the Court has taken cognizance of said charge-sheets.

3. Learned Advocate for the applicant has stated that this Court has released accused No.1 - Salammullah Khan and accused No.2- Nitesh Mourya on 26.11.2024 observing that Section 370 of I.P.C. is not made out as the essential ingredients i.e. exploitation of child has not been substantiated. The witness herself has handed over the child for adoption, therefore, the offence under Section 369 of I.P.C. is also not made out against the present applicant. The applicant is arrested on 2.3.2023 and since then he is in custody. Since last two years there is no progress in trial.

4. The learned Advocate for the applicant has relied on the judgment of the Hon'ble Apex Court in case of *Satender Kumar Antil V/s. Central Bureau of Investigation and another* reported in **(2022) 10 SCC 51** in which it is observed that if the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of the accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

5. The observations made in the case of *Gudikanti Narasimhulu Vs Public Prosecutor, High Court* reported in **(1978) 1 SCC 240** are that the object to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.

6. The appellant is having deep roots in the society, there is no possibility of his fleeing away from the country and not being available for facing the trial. In this case, the list of witnesses along with charge-sheet has been filed which shows that 49 witnesses are to be examined. Considering the same, it can be inferred that the possibility of the trial to end in the near future is meager.

7. The learned Advocate for the applicant has stated that as the offence under Section 370 of the I.P.C. will not be attracted, the other co-accused are released on bail, one of the accused is protected by this Court observing that the essential ingredients of offence under Section 370 of the I.P.C. will not be attracted. The offence under the provisions of MCOC Act will not be attracted and only because offence under the provisions of MCOC is registered, the bail cannot be rejected.

8. The applicant has relied on the judgments of the Hon'ble Apex Court in support of his argument that though the special enactment is there, if there is delay in trial then the applicant can be released on bail.

9. The learned Advocate for the applicant has relied on the judgment of the Hon'ble Apex Court in Special Leave to Appeal (Cri.) No.4648/2024 (Ankur Chaudhary V/s. State of Madhya Pradesh). Reliance is also placed on the order passed by the Hon'ble Apex Court in Criminal Appeal No.2790/2024 (Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari V/s. State of Uttar Pradesh) wherein in paragraph No.32 following observations are made.

“32. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained

from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

10. In *Ramlal V/s. State of Rajasthan* reported in **2024 SCC OnLine SC 2594** the Hon’ble Apex Court for the delay of one year and six months in trial has released the accused on bail.

11. Reliance is also placed to the observations made in the case of *Prabhakar Tewari Vs. State of Uttar Pradesh and another* reported in **(2020) 111 SCC 648** wherein in paragraph No.7 following observations are made.

“7. On considering the submissions of the learned counsel for the parties. Having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in the case of Mahipal (supra) for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves

cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex-facie error in the order has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.”

12. Considering the above observations and as the Court has already released some of the accused persons on bail, prayed to release the applicant on bail.

13. The learned Public Prosecutor opposed the application stating that the offence under the provisions of MCOC Act is registered against this applicant. The allegations against this applicant are about facilitating the other co-accused. Section 3(2) of the MCOC Act reads as under:-

“3. Punishment for organised crimes. -

(1)

(i)

(ii)

(2) *Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.”*

The role of the applicant is facilitating the commission of offence. In case of *Prasad Shrikant Purohit V/s. State of Maharashtra and another* reported in **(2015) 7 SCC 440** in para 85 following observations are made.

“85. A reading of para 31 in Ranjitsing Brahmajeetsing Sharma case [(2005) 5 SCC 294] shows that in order to invoke MCOCA 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 MCOCA.”

14. Though the observations are made by this Court that the offence under Section 370 of the I.P.C. will not be attracted, the act of the applicant comes under the definition of MCOC Act. There are 7 offences registered against this applicant. *Modus operandi* is same. The association of the present applicant with accused No.1, who is the gang leader, is clearly reflected from the crime chart. Considering the role played by this applicant, though there is delay, rigors of Section 21-A of the MCOC Act will attract. Hence, prayed to reject the application.

15. Heard both sides and perused the record.

16. It appears from the record that this Court has released the co-accused in other similar crimes. After going through the orders passed by this Court while releasing the co-accused, it appears that it was not brought to the notice of this Court that the offence under the provisions of MCOC Act is registered. Sanction order for MCOC is dated 26.7.2023 and the offence under the provisions of MCOC Act is registered in Crime No.50/2023. The bail is granted in crimes where the offence is not registered under the provisions of MCOC Act.

17. Considering the act of the applicant, his active participation and the conspiracy between the co-accused and the present applicant clearly transpires. As per the crime chart given by the learned Public

Prosecutor the offences which are registered against this applicant are along with gang leader Ayesha and *modus operandi* is same. Similar offences are registered against this applicant. Though the learned Advocate for the applicant has relied on the judgments of the Hon'ble Apex Court wherein on the ground of delay in trial, the bail was granted, in my view, in this case rigors under Section 21-A of the MCOC Act will apply.

18. The provisions of MCOC Act are special provisions for prevention and control of, and for coping with the criminal activity by organized syndicate or gang, the statements and 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 MCOC Act, if restrictions for the grant of bail and the material placed on record by the prosecution are considered, the applicant has not made out a case for grant of bail in view of the provisions of Section 21(4) of the MCOC Act, which bars the Court from releasing the accused on bail subject to conditions prescribed in clauses (a) and (b) therein. Sub-section (4) of Section 21 of the MCOC Act provides that it is incumbent on the part of the Court before granting bail to any person accused of an offence punishable under the provisions of MCOC Act that there are reasonable grounds for believing that he is not guilty of the offence and he is not likely to commit any offence while on bail.

19. On perusal of record it appears that there are 7 similar offences committed by the applicant. As per Sub-section (3) of Section 4 of MCOC Act the applicant is the facilitator. He has taken victims -witnesses to the main accused. Said gang leader was continuously in contact with this applicant. Out of 7 offences, six

offences are committed with gang leader Ayesha. If the accused is released on bail, there is every possibility of commission of similar offence. The reasonable grounds are made out to believe that the accused is guilty of such offence. This satisfaction contemplated in Clauses (a) and (b) of Sub-section (4) of Section 21 of the MCOC Act regarding the accused being not guilty has to be based on the reasonable grounds. Though expression “reasonable grounds” is not defined, it requires something more than *prima facie* grounds. Considering the entire material placed on record there is a *prima facie* material to show that there is nexus between the applicant and other members of the organized syndicate and he is involved in the conspiracy.

20. Before granting bail to the accused the Court has to come to conclusion that accused is not guilty of the offence on the basis of reasonable grounds. The reasonable belief on the existence of such facts and circumstances as are sufficient in them to justify the satisfaction that accused is not guilty of alleged crime has to be there.

21. In the light of above well settled legal position, at this stage, there is sufficient material on record to hold the involvement of applicant in the crime along with main accused. It is difficult to come to conclusion that he is not guilty of the offence.

22. The evidence available on record, *prima facie*, discloses the complicity of the applicant in assisting the members of the organized crime syndicate to commit the organized crime. In view of the above, application deserves to be rejected and the same is rejected.

(MRS.VRUSHALI V.JOSHI, J.)

Tambaskar.