2025:BHC-NAG:14971

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

CRIMINAL APPLICATION (BA) NO.1030/2025
(Shaikh Farukh @ Lali S/o Akhtar Shaikh Vs. State of Maharashtra, through Sub-Divisional Police Officer, Division City, Yavatmal and another)

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

Mr. Pankaj Navlani, Advocate for the applicant.
Mr. D.V. Chauhan, Senior Advocate and Public Prosecutor with Mr. N.R. Rode, A.P.P. for the non-applicant Nos.1 and 2/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATED: 24.12.2025.

The applicant is arrested in Crime No.267/2024 registered with Police Station Babhulgaon, District Yavatmal for the offence punishable under Sections 307, 397, 341, 294 and 201 of the Indian Penal Code read with Sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short “MCOC Act”).

2. The applicant was arrested on 19.05.2024 and since then he is in custody.

3. The facts, in brief, are as under:-

The prosecution case is that on 05.05.2024 while the informant he was proceeding on his motorcycle, he was intercepted by five unknown persons who allegedly assaulted him and robbed an amount of Rs.2,500/-. It is alleged that during the course of the incident, one of the assailants inflicted knife blows upon the informant, as a result of which, he sustained injuries and was initially taken to Rural Hospital, Babhulgaon and thereafter referred to the Government Medical College and Hospital, Yavatmal for further treatment. The

First Information Report in respect of the said incident came to be lodged on 07.05.2024 i.e. after a delay of two days. As per the prosecution case, specific role of assault with a knife is attributed to co-accused Prajwal Rohankar, while the act of removal of cash is attributed to another co-accused and no specific overt act of assault or robbery is attributed to the present applicant except the allegation that he was present at the spot along with another accused.

4. The learned Advocate for the applicant has submitted that mere registration of multiple offences against an accused does not *ipso facto* attract the provisions of the Maharashtra Control of Organized Crime Act, 1999. What is statutorily required under Section 2(1)(d) of MCOC Act is the existence of a continuing unlawful activity, which must be supported by a live, proximate and demonstrable nexus between the accused and an organized crime syndicate. In the absence of correlation by way of commonality of purpose, *modus operandi*, organizational linkage, or continuity of activity, numerical plurality of offences is legally inconsequential and insufficient to invoke the stringent provisions of MCOC Act. Unless the prior offences have crystallized into charge sheets, the foundational requirement for invoking MCOC Act remains unfulfilled. It is imperative in MCOC jurisprudence to distinguish whether the alleged offence was committed in the individual capacity of the accused or as a part of syndicate activity. The crime-chart relied upon by the prosecution, particularly at page 65, does not disclose any coherent linkage between the applicant and the alleged syndicate activities. The said chart neither establishes continuity of unlawful activity nor reflects any organizational hierarchy of functional role of

the applicant within an organized crime syndicate thereby failing to satisfy the statutory test of 'organized crime' under the MCOC Act. The Test Identification Parade, by itself, is not a substantive evidence and in the absence of reliable corroboration, loses its probative value and cannot independently sustain the invocation of the provisions of MCOC Act. The prosecution has failed to establish, through cogent and admissible material, that Shaikh Farukh was operating in the concerned area during the relevant period or that the present applicant acted under the influence, control or directions of the gang leader Yash Subhedar.

5. The learned Advocate for the applicant has relied on the judgment in the case of *Govind Sakharam Ubhe V/s. State of Maharashtra (At the instance of DCB, CID, Unit IV, Mumbai*) reported in **2009 SCC OnLine Bom 770** wherein it is observed that the essence of MCOC Act lies in establishing a clear and proximate nexus between the accused, the crime, and the organized crime syndicate. In the absence of such nexus, the invocation of MCOC Act is legally untenable and liable to fail at the threshold.

6. Reliance is also placed on the judgment in the case of Shabhana Praveen V/s. State of Maharashtra (Criminal Writ Petition No.1959/2021) wherein it observed that the relevance and evidentiary value of individual charge-sheets are matters ultimately to be adjudicated at trial. However, at the threshold stage, the absence of legally sustainable charge-sheets vitiate the very assumption of continuing unlawful activity and disentitles the prosecution from invoking MCOC Act. Hence, prayed to allow the application.

7. Learned Senior Advocate and Public Prosecutor has submitted that the present offence is of a grave and serious nature involving offences punishable under Sections 307, 397, 341, 294 and 201 of the Indian Penal Code read with Sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999. The allegations disclose a violent robbery committed by a group of accused persons acting in concert wherein the informant was assaulted with a deadly weapon and sustained grievous injuries.

8. It is submitted that the investigation has revealed *prima facie* involvement of the present applicant in the commission of the offence. The applicant was present at the spot of incident and actively participated by restraining the victim thereby facilitating the assault and robbery committed by the co-accused. The doctrine of common intention squarely applies and the applicant cannot seek bail merely on the ground that the knife blow was inflicted by another co-accused.

9. The learned Senior Advocate and Public Prosecutor has relied on the Test Identification Parade conducted during the course of investigation wherein the victim has identified the present applicant as one of the assailants involved in the incident. In addition, statements of independent witnesses have been recorded, who chased the assailants while they were fleeing away from the spot. This material cumulatively establishes the presence and active participation of the applicant in the offence. During the investigation, incriminating material including a mobile phone and travel-related documents are recovered from the applicant. The Call Detail Records obtained by the Investigating Officer demonstrate frequent and

continuous contact between the applicant and other co-accused persons before and after the incident establishing coordination and conspiracy. This material further strengthen the prosecution case of organized criminal activity. The gang leader, Yash Subhedar, has multiple serious offences registered against him and the present applicant is shown to be an active member of the said gang. The applicant's criminal antecedents disclose repeated involvement in serious offences thereby satisfying the statutory requirements of Sections 2(1)(d), 2(1)(e) and 3 of the MCOC Act. The applicant has a substantial criminal history, with multiple offences registered against him over a period of time. The crime chart demonstrates that the applicant has acted in concert with other gang members in the past including co-accused in the present crime.

10. Considering the criminal activities of the applicant and his association with an organized crime syndicate there is a strong likelihood that if the applicant is released on bail, the applicant may indulge in some criminal activity. There is also a reasonable apprehension that the applicant may tamper or intimidate the prosecution witnesses thereby hampering the trial. Hence, prayed to reject the application.

11. Heard both sides and perused the record.

12. Entitlement of bail was pleaded on the ground of parity. One of the co-accused Tejas Gaikwad is released on bail who was having criminal cases against him. The role of this applicant is similar to that of Tejas. Though the crimes are registered against this applicant, only one offence is with co-accused in crime syndicate. All other offences

are in individual capacity and in one of the earlier offences he is acquitted.

13. According to learned A.P.P. number of offences are committed by this applicant in same area i.e. 16 crimes are from Awadhutwadi Police Station which shows prominence and his intention to create terror in vicinity.

14. On perusal of the crime chart it appears that all 15 crimes are committed in his individual capacity and they do not have any nexus whatsoever with the activities of crime syndicate and, therefore, could not be taken into account for recording a finding in respect of said third criteria. If the charge sheets were filed only in individual capacity against the present applicant and not as a member of crime syndicate it would have to be seen whether he had involved himself previously in commission of any act prohibited under the law.

15. Learned Advocate for the applicant has relied on the judgment of this Court in the case of *Dinesh Bhondulal Baisare V/s. State of Maharashtra* reported in **ABC 2016 (II) 119 BOM.** Paragraph No.5 of said judgment reads as follows:-

> *"5. But, there is yet another criterion, criterion of possibility of commission of offence under the MCOC Act, which must be shown to be satisfied by the prosecution so as to disentitle the applicant from the relief sought by him. In the case of Ranjitsing Brahmajeetsing Sharma (supra), the Hon'ble Apex Court has laid down that in order to examine whether the case of the applicant falls within the scope of Section 21(4) or not, it is necessary that the Court must be satisfied that there is prima facie evidence against the applicant indicating commission of the offence under the provisions of the MCOC Act and that there should also be a reasonable possibility of the applicant committing the crime under the said Act. This can be seen from the observations made by the Hon'ble Apex*

Court in paragraph 49 of the judgment, which are re-produced thus:

> *"We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. 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 organised 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. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."*

16. To determine whether the accused is likely to indulge in commission of the crime under the MCOC Act, it has to be scrutinized that whether the crimes which were previously registered against the present applicant were characterized by individuality. It is seen from

the crime chart annexed to the present charge sheet that in those charge sheets no other person except in one crime with said Tejas the applicant was involved. There is no material on the basis of which it could be said that if released on bail there would be a reasonable possibility of applicant committing the crime under the said Act. So, if the charge sheets were filed only in individual capacity against the present applicant and not being a member of crime syndicate it would have to be seen as to what happened in those charge sheets.

17. About the allegations regarding involvement of this applicant in offence under Section 307 of the Indian Penal Code, it appears that the applicant was present when the robbery was committed as per the F.I.R. The first informant has identified the applicant from the photos of Instagram. Though he has identified the persons by naming them and attributed the role, however, Test Identification Parade was conducted after three months. If we took the contents of the F.I.R. as it is, the role attributed to this applicant is that he was present on the spot along with accused Tejas Gaikwad. That is the only role attributed to this applicant by the first informant. There is no material to show that the applicant advocated, abetted or incited the commission of any unlawful activity. There is no material to show that there was any conspiracy. Considering the role attributed to this applicant and as the co-accused is already released on bail, only because the number of offences are registered against this applicant, he cannot be deprived from the ground of parity. Hence, I pass the following order:-

i) The Criminal application is allowed.

ii) Applicant-Shaikh Farukh @ Lali S/o Akhtar Shaikh be released on bail in Crime No.267/2024 registered with Police Station Babhulgaon, District Yavatmal for the offence punishable under Sections 307, 397, 341, 294 and 201 of the Indian Penal Code read with Sections 3(1)(i), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties in the like amount before the trial Court.

iii) The applicant shall not in any way tamper with the prosecution evidence.

iv) The applicant shall not pressurize or threaten the prosecution witnesses.

v) The applicant shall co-operate with the learned trial Judge in the conduct of the trial.

18. The Criminal Application stands disposed of accordingly.

(MRS.VRUSHALI V.JOSHI, J.)

Tambaskar.

Signed by: MR. N.V. TAMBASKAR
Designation: PS To Honourable Judge
Date: 24/12/2025 15:33:25