Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.962 OF 2025

Habiba Hussain Khan …Applicant
Versus
State of Maharashtra and Anr. …Respondents

Mr. Rizwan Merchant a/w Shabbir Shora, Mubbasheera Shaikh and Aradhya, for the Applicant.
Mr. Rishikesh M. Pethe, APP for the Respondent-State.

CORAM: R. M. JOSHI, J.
RESERVED ON: 04th MAY, 2026.
PRONOUNCED ON: 07th MAY, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No.522 of 2021 registered with Ghatkopar police station, initially for offence punishable under Section 387 read with Section 34 of the Indian Penal Code and as per CR No.50 of 2021 registered with Anti Extortion Cell, offence under the provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) which were came to be applied against the present Applicant.

2. In brief the case of the prosecution is that the co-accused - Yusuf Bachkana called the Informant, threatened him and demanded an amount of Rs.50 lakhs from him. It is the case of the Informant that he is into the business of construction and had a site at Panvel. The said business was done in the partnership. In one of the crime registered against the partners, they were arrested and kept in Taloja Jail in the year 2019. Later on some of the partners were released on bail. Thereafter, the Informant started receiving phone calls from unknown numbers on his WhatsApp. The co-accused demanded Rs.50 lakhs with two flats in the project at Panvel or else threatened to kill him. On the basis of the FIR offence came to be registered. Later on, the provisions of MCOCA were invokved.

3. During the course of the investigation it was revealed that the calls were made by the co-accused Yusuf Bachkana claiming himself to be a gangster. It was further revealed that the present Applicant abetted the co-accused in commission of the crime. Her role was alleged to have been collecting information of the Informant and to pass it on to co-accused – Yusuf Bachkana through another co-accused (now deceased). After the role of the present Applicant was revealed in crime, she came to be arrested. On conclusion of investigation, the charge-sheet came to be filed.

4. Learned counsel for the Applicant submits that the Applicant is in jail for a period of about five years and since the trial has not commenced, she is entitled for bail. To support his submission he placed reliance on order of Hon'ble Supreme Court in the case of ***Chintan Rajubhai Panseria v. the State of Maharashtra***[1]**.** According to him, it is held therein that since the accused is in jail for a substantial time and the trial is not likely to commence and conclude in a short period of time, the Applicant is entitled for bail. On merits, it is his submission that there is no

1 Special Leave to Appeal (Crl.) No.439 of 2026 dated 28.01.2026 evidence in order to connect the Applicant with the crime. According to him, there is no evidence to show any link between the present Applicant and the co-accused – Yusuf. It is argued that another co-accused who is now deceased, his confessional statement cannot be used against the Applicant as well as to the co-accused since he cannot be tried with them. It is his submission that the manner in which the investigating agency has conducted the seizure panchanama, creates doubt with regard to the same. It is argued that in absence of any evidence to show the contact between the Applicant and the co-accused – Yusuf, she cannot be said to have being involved in the organized crime syndicate. Insofar as the recovery of visiting card from the present Applicant is concerned, it is argued that the Informant is admittedly a developer and is not into the business of fire engineering. It is submitted that the visiting cards seized do not indicate that the same belong to the developer and as such according to him there is no evidence against the present Applicant indicating the she having communicated details of Informant to co-accused. On these amongst the other contentions, he seeks bail.

5. Learned APP opposed the application firstly by drawing attention of the Court to the provisions of Section 21(4) of the MCOCA. It is his submission that unless the Court records a reasonable belief that the Applicant has not committed the crime in question and is not likely to commit crime if released on bail, the Applicant is not entitled for bail. To support his submission he placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***State of Maharashtra v. Vishwanath Maranna Shetty***[2]**.**

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2 (2012) 10 Supreme Court Cases 561

He made reference to paragraph Nos.15 and 16 of the said judgment. On merits, it is his submission that there is evidence in the form of statement of witnesses which indicate that the present Applicant visited the site of the Informant at Panvel and collected information to pass it on to the co-accused. In this regard, reference is made to the statement of the daughter of the Applicant so also the visiting cards seized at her instance. It is pointed out that the Informant in his statement clearly stated about the business of the Informant being of fire engineering too. It is his submission that the said statement of witnesses coupled with the visiting cards being seized at the instance of the Applicant is sufficient evidence to connect the Applicant with the crime in question. It is his submission that having regard to the nature of crime, that the Applicant headed, abetted and assisted the co-accused to extort money from Informant, it is not a fit case for grant of bail.

6. Learned APP submits that the application of co-accused – Yusuf Bachkana for bail has already been rejected. The observations made therein indicate the nexus between the present Applicant and the co-accused.

7. Though it is sought to be argued on behalf of the Applicant that the provisions of the MCOCA would not get attributed against the Applicant, *prima facie* perusal of the material on record indicates that the act of extortion is committed by an organized crime syndicate. There is *prima facie* evidence to show that the information with regard to the Informant was collected through the present Applicant and the co-accused gave extortion calls / messages to the Informant. The Informant was asked to pay Rs.50 lakhs and was threatened to be killed if the demand is not fulfilled. There is evidence on record to show that in the year 2014 – 2015 offences were registered against the co-accused. Though it resulted in acquittal, the same becomes immaterial for consideration at least at this stage. This Court therefore finds no substance in the contention of learned counsel for the Applicant that the provisions of the MCOCA are not rightly invoked herein.

8. In order to appreciate the embargo created by Section 21(4) of the MCOCA so also the considerations to be kept in mind while deciding application for bail, it would be relevant to reproduce observations of the Hon'ble Supreme Court in case of ***Vishwanath (supra).*** Paragraph Nos.15 and 16 of the said judgment read thus:

> ***15.*** *In an answer to the same, this Court held as under: (Ranjitsing _ Brahmajeetsing case, SCC p. 317-19, paras 38, 44 & 46)*
>
> > *"38. 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 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.

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44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

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46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA 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. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."*

16. *It is relevant to note that MCOCA was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by an organised crime syndicate or gang, and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons for enacting the said Act is as under:*

"Organised crime has been for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, 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 organised crime being very huge, it has had serious adverse effect on our economy. It was seen that the organised criminal syndicates made a common cause with terrorist gangs and foster narco terrorism which extend beyond the national boundaries. There was reason to believe that organised criminal gangs have been operating in the State and thus, there was immediate need to curb their activities.

It was also noticed that the organised criminals have been making extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and the administration of justice.

2. The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime. The 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.

9. In the light of the aforestated position of law, if the evidence on record is considered on the face of it, it reveals that there is evidence in the form of statement of witnesses indicating that the Applicant had gone to the Informant's office and collected information including the visiting cards in order to provide the phone number to the co-accused. At this stage, it is not open for the Court to discard / disbelieve the statement of witnesses in this regard. The said statement gets further corroboration with recovery of visiting cards from the present Applicant. It is though sought to be argued that the visiting cards do not pertain to the business of developer, the FIR itself indicates that the Informant is also involved in the business of fire engineering. Moreover, what is important is with regard to the information of the Informant and his phone number to facilitated the co-accused to make extortion calls. There is further evidence collected during the course of investigation which indicates that phone calls were made to the Informant seeking money and those calls were made from Bellary, the prison where the co-accused Yusuf is lodged.

10. Insofar as the confessional statement of present Applicant and the co-accused (now deceased) is concerned, though the Applicant gave application before the Special Court indicating that she is not inclined to make any confessional statement, however ultimately her confessional statement was recorded. In compliance of the provisions of Section 18 of the Act, the said confessional statement was placed before the concerned Magistrate. Before the Magistrate the Applicant though has sought to retract certain portion thereof, the entire statement has not been denied, nor it is claimed that the same is involuntary. Thus, it will be a matter of Trial Court to consider these aspects during the course of trial and no observations could be made thereupon at this stage.

11. Suffice it to say that *prima facie* there is evidence on record to indicate that the Applicant has aided actively to the co-accused in commission of crime in question. As observed by the Hon'ble Supreme Court in case of ***Vishwanath (supra),*** the Court is required to take into consideration the purpose and objective of MCOCA. Having regard to the facts of the case and considering the seriousness of the crime and as there is *prima facie* evidence showing involvement of the Applicant in the crime, the twin conditions of Section 21(4) of the MCOCA are not satisfied herein this case. Hence, the Applicant has failed to make out a case for grant of bail.

12. Bail Application stands dismissed.

13. Trial however stands expedited.

14. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(R. M. JOSHI, J.)