

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 944 OF 2026
IN
ANTICIPATORY BAIL APPLICATION NO.281 OF 2026**

The State of Maharashtra]
(Through Sr. Police Inspector]... Applicant
Panvel City Police Station, Raigad](Orig. Respondent)

Versus

Gulamgaus Narsuddin Mukadam]
Age : 37 Years]
R/o. Mhapral Mohalla]
Mandangad, Ratnagiri]... Respondent
Maharashtra – 415203,](Orig.Accused)

Mrs. Mankuwar Deshmukh, Additional Public Prosecutor for the
Applicant/ State.

Mr. Fakhruddin Chotu Khan, Ms. Saima Ansari, Ms. Prachi Parshuram
Koli i/b Mr. Amol Gautam Khillare for the Respondent.

**CORAM : ASHWIN D. BHOBE, J.
RESERVED ON: 08th May, 2026.
PRONOUNCED ON : 15th June, 2026.**

ORDER :

1. Heard, Ms. Mankuwar M. Deshmukh, learned Additional
Public Prosecutor for the Applicant-State and Mr. Fakhruddin
Khan, learned Advocate for the Respondent.

2. By the present Application filed under Sections 483(3) and 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (“BNSS 2023”), the Applicant-State has sought the following reliefs:

“(a) This Hon'ble Court may be pleased to cancel the Anticipatory Bail granted to the Respondent by this Hon'ble Court by an Order dated 03/02/2026 passed in Anticipatory Bail Application No. 281 of 2026 and/or in alternative.

“(b) This Hon'ble Court may be pleased to grant permission to the Investigating officer for arresting the Respondent in view of invocation of the provisions of the MCOC Act to the said offence registered vide C.R. No. 770/2025 with Panvel City Police Station, under Sections 5-B, 5-C, 9, 9-A of Maharashtra Animal Preservation Act, 1976 and Sections 325, 3(5) of BNSS,2023, Sections 3(I)(ii), 3(2), 3(4) of MCOC Act.”

3. Material facts gathered from this Application relevant to its adjudication are that the Panvel City Police Station, Raigad, registered Crime No. 770 of 2025 for offences punishable under Sections 5-B, 5-C, 9 and 9-A of the Maharashtra Animal Preservation Act, 1976 and Sections 325 and 3(5) of the BNSS, 2023;

a. Ms. Mankuwar M. Deshmukh, learned Additional Public Prosecutor, states that Yaseen Moinuddin Shaikh is Accused No. 1, Pashu Usman Kureshi is Accused No. 2, Mohammad Ali Akbar Ali Shah is Accused No. 3 and the

Respondent (Gulamgaus Narsuddin Mukadam) is
Accused No. 4 in Crime No. 770 of 2025;

- b. Accused No. 2 and Accused No. 3 were enlarged on Regular Bail by the Court of the Judicial Magistrate First Class, Panvel;
- c. Apprehending arrest in Crime No.770 of 2025, the Respondent approached the Sessions Court with an application for pre-arrest bail. The Sessions Court rejected the Application. Respondent thereafter filed Anticipatory Bail Application No.218 of 2026 before this Court;
- d. By order dated 03.02.2026 passed in Anticipatory Bail Application No. 218 of 2026, this Court granted pre-arrest bail to the Respondent;
- e. During the course of the investigation, the Joint Commissioner of Police, Navi Mumbai, granted prior Approval to invoke the provisions of the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act"). The operative part of the Order dated 20/02/2026 in the

proceeding bearing OW No. 35/Jt.CP/MCOC/Panvel

City/2026, granting prior Approval, reads as under:-

“NOW, THEREFORE, I, Sanjay Yenpure, Joint Commissioner of Police, Navi Mumbai, in the rank of Special Inspector General of Police, in exercise of the powers conferred under Section 23(1)(a) of the Maharashtra Control of Organised Crime Act, 1999, hereby grant **prior approval** to invoke Sections 3(1) (ii), 3(2) and 3(4) of the said Act in C.R. No. 770/2025 of Panvel City Police Station registered under Sections 325 & 3(5) of the Bharatiya Nyaya Sanhita, 2023; Sections 5(B), 5(C), 9 & 9A of the Maharashtra Animal Preservation Act, 1976; and Sections 66(1) & 192 of the Motor Vehicles Act, 1988.

*I further direct **Shri Bhausahab K. Dhole, Assistant Commissioner of Police, Panvel Division, Navi Mumbai**, to investigate the said offence.*

*Shri Bhausahab K. Dhole, ACP, Panvel Division, Navi Mumbai, shall obtain **sanction from the Commissioner of Police, Navi Mumbai (Competent Authority)** before filing the charge-sheet in the matter, as mandated under Section 23(2) of the Maharashtra Control of Organised Crime Act, 1999.”*

- f. Upon invocation of the provisions of the MCOC Act in Crime No. 770 of 2025, the Applicant filed an Application before the Court of the Judicial Magistrate First Class, Panvel, seeking permission to re-arrest the Accused Nos. 2 and 3 in view of the change in circumstances. The Court of the Judicial Magistrate First Class vide order dated 21.02.2026 passed in C.R. No. 770/2025, granted permission to re-arrest Accused Nos. 2 and 3 in Crime No. 770 of 2025;

g. Based on the material change in circumstances, the invocation of the MCOC Act and on the ground of the need for an effective investigation, the Applicant has filed this Application seeking cancellation of the Anticipatory Bail granted to the Respondent and/or permission to re-arrest the Respondent.

4. The Respondent (Accused No. 4) has filed his reply dated 05.05.2026, opposing this Application.

5. Ms. Mankuwar Deshmukh, learned Additional Public Prosecutor for the Applicant, submits that the custodial interrogation of the Respondent is required in the present crime in view of the change in circumstances due to the invocation of the MCOC Act, for a detailed and effective investigation. She submits that the offences charged against the Respondent are serious in nature. She relies on the decision of the Hon'ble Supreme Court in the case of *Sumit v/s State of Uttar Pradesh and another*¹. She therefore prays for relief in terms of prayer clauses (a) and (b) of this Application.

¹ (2026 SCC OnLine SC 186)

6. Mr. Fakhruddin Khan, learned Advocate for Respondent, has, in addition to canvassing oral arguments, tendered written submissions. Mr. Fakhruddin Khan submits that the Respondent has strictly adhered to all the conditions of the order dated 03.02.2026 passed in Anticipatory Bail Application No. 218 of 2026. He submits that the Respondent has neither misused his liberty, nor has the Applicant alleged that the Respondent has misused his liberty. He submits that the custodial interrogation of the Applicant is not required. He submits that the permission granted by the Court of the Judicial Magistrate First Class, vide order dated 21.02.2026, to re-arrest the Accused Nos. 2 and 3, amounts to a violation of the principles of natural justice as regards the said Accused Nos. 2 and 3, as no opportunity of hearing was afforded to them prior to the permission being granted. He submits that the approval granted by the Joint Commissioner of Police, Navi Mumbai, under the provisions of the MCOC Act, is a colourable exercise of power. He submits that the Respondent has zero criminal antecedents and a clean record. He submits that the decision in the case of Sumit (supra) does not make it mandatory to arrest the Accused upon the subsequent addition of serious offences. He submits that the offences under the

MCOC Act are not attracted in the present crime. He relies on the decision of the Hon'ble Supreme Court in the case of *Dolat Ram & Others v. State of Haryana*² and submits that bail, once granted, cannot be cancelled mechanically and requires very cogent and overwhelming circumstances.

7. Arguments in this Application were advanced on 08.05.2026 (i.e. the last day prior to summer vacations). Upon conclusion of arguments, Ms. Mankuwar Deshmukh, learned Additional Public Prosecutor, requested time to file bullet submissions. Time, as requested, was granted and the matter was closed for orders. Bullet submissions have since been filed by Ms. Mankuwar Deshmukh, learned Additional Public Prosecutor.
8. Heard arguments and perused records with the assistance of the learned Advocates.
9. The Hon'ble Supreme Court, in the case of Sumit (supra), in paragraphs 30, 31, 32, 33 and 34, has held as follows:

“30. Before we close this matter, we would like to clarify something important. Take a case, wherein an accused has been released on bail, pending the investigation, and later upon completion of the investigation, chargesheet is filed with addition of new cognizable and non-bailable offences, then what would be the position?”

² (1995) 1 SCC 349

31. The aforesaid question was looked into and answered by this Court in *Pradeep Ram v/s. State of Jharkhand* and another reported in 2019 CrL. L.J. 3801, wherein this Court after discussing various decisions, more particularly, the decision in *Prahlad Singh Bhati Vs NCT Delhi* and another reported in (2001) 4 SCC 280 held that with the addition of a new cognizable and non- bailable offence more particularly of a serious nature, the accused becomes disentitled to the liberty earlier granted to him in relation to the offences for which the FIR came to be registered.

32. In such circumstances, the correct approach of the Court concerned should be to apply its mind afresh as to whether the accused is entitled for grant of bail in the changed circumstances.

33. In *Prahlad Singh Bhati (supra)*, the FIR initially was registered under Sections 306 and 498A of the IPC respectively. But, subsequently, the chargesheet showed that the accused had committed offence under Section 302 of the IPC. This Court took the view that with the change of the nature of the offence, the accused could be said to have become disentitled to the liberty granted to him in relation to the offence for which the FIR was registered, more particularly, if the offence is altered for an aggravated crime.

34. In such circumstances referred to above, we arrive at following conclusions in respect of a circumstance whereafter the grant of bail to an accused, further cognizable and non- bailable offences are added:-

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In the event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Sections 437(5) or 439(2) of Cr. P.C. respectively for arrest of the accused and his custody.

(iii) The Court, in exercise of its power under Sections 437(5) or 439(2) of Cr.P.C. respectively, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of its power under Section 437(5) as well as Section 439(2) respectively can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such

addition of offence or offences it needs to obtain an order to arrest the accused from the Court which had granted the bail.”

10. The offences registered against the Respondent on the date (03.02.2026) Anticipatory Bail Application No.218 of 2026 was granted were under Sections 5(B), 5(C), 9 and 9A of the Maharashtra Animal Preservation Act, 1976, r/w. Sections 325 and 3(5) of the BNS Act, 2023.

11. Paragraph Nos. 6 and 7 of the order dated 03.02.2026 passed in Anticipatory Bail Application No.218 of 2026 read as follows:

“6. Perusal of the record shows that while granting regular bail to Accused Nos. 2 and 3, the Learned Judicial Magistrate, First Class, Panvel observed that the offences carry maximum punishment up to five years and that there are no criminal antecedents against them. It was further observed that no purpose would be served by keeping them in jail at the pre-trial stage and that the material on record indicates that the main accused No.1 is already in custody.

7. Accordingly, a case is made out for grant of Anticipatory Bail. In view thereof, the following order is passed....”

(emphasis supplied)

12. Prior Approval under Section 23(1)(a) of the MCOC Act, to invoke Sections 3(1) (ii), 3(2) and 3(4) of the MCOC Act in Crime No.770 of 2025, granted by the Joint Commissioner of Police, Navi Mumbai, is dated 20.02.2026.

13. Mr. Fakhruddin Khan, learned Advocate for the Respondent, neither contends that the Respondent has challenged the Order dated 20/02/2026 passed by the Joint Commissioner of Police, Navi Mumbai, nor has the Respondent made any such statement in his reply dated 05.05.2026.

14. The offences in Crime No.770 of 2025, as they stood on 03.02.2026, carried a maximum punishment of five (5) years. Under the order dated 20.02.2026, new cognizable and non-bailable offences of a serious nature under the Special enactment were added to Crime No.770 of 2025.

15. Thus, since offences under the MCOC Act have been charged against the Accused in Crime No. 770 of 2025, bail in favour of the Accused in respect of offences under the Maharashtra Animal Preservation Act, 1976 and BNSS, 2023, will be of no avail. Instead, the Accused will have to be taken into custody in relation to the offence under the MCOC Act. Bail under the MCOC Act would depend on the satisfaction of the rigours of the provisions of the said Act.

16. This Court, in the case of *Sarang Avind Goswamy v/s. State of Maharashtra*³ in paragraph Nos. 6, 7, 8 and 9 has held as follows:

“6. The above said decisions expound the general principles that ought to govern consideration of the prayer for cancellation of bail. It is not necessary to reproduce the general principles stated in the aforesaid decisions which are too well established. Although several authorities have been pressed into service, however, to consider the issue in the present case only four decisions may be of some relevance. For, the issue is whether posterior application of provision of MCOCA to the pending C. R. can be the sole basis to cancel the bail. We shall now advert to decision reported in 7977 Cr.L.J. 1401, Allahabad High Court, wherein it is observed that consideration of material for the purpose of cancellation of bail relates only to discovery of subsequent new material which was not already available to the prosecuting agency. It is further observed that it would not in any manner tantamount to subsequent consideration of the material if already existing on the record. Reference can also be made to the another decision of Allahabad High Court reported in 1988 All.L.J. 1360, which had occasioned to deal with the situation wherein after release on bail, further offence was added to the pending C. R. against the accused. Perhaps this is the nearest case to the facts of the case on hand. However, this decision deals with the newly added offence under the "ordinary law". The Allahabad High Court while considering the matter, in paragraph 4, took the view that merely because another offence has been added to the pending C. R. that cannot be the basis for the accused to furnish fresh bail bond. It is observed that fresh bonds have to be filed but the fact remains that unless there is charge of misuse or abuse of bail granted, the accused should not be taken into custody unless opportunity to file fresh bonds is extended to him.

7. Reference can also be made to another decision vehemently pressed into service by the applicant reported in 7995 Cr.L.J. 184. The Madras High Court has observed that past criminal record which could be considered by the court while examining the earlier bail cannot be the basis to cancel the bail at the subsequent point of time. However, it is only when evidence regarding misuse of bail is produced, the question of cancellation of bail would arise. Strong reliance has been also placed on the decision of Supreme Court reported in 7999 Cri.L.J. 4063. It is observed that the Court cannot cancel bail in mechanical manner but has to adhere to principles for cancellation of bail established by reported decisions.

3 (2005 ALL MR (Cri) 1954)

8. *Relying on the aforesaid judgments, it is contended that in the present case, the prosecution was aware about the pending criminal cases against the applicant and that material was not relied upon on the earlier occasion, If it is so, it cannot be made basis for cancellation of bail. It is contended that offence under provisions of M.C.O.C. Act is invoked mainly on the basis of the offences already registered against the applicant of which cognizance is taken by the Court of competent jurisdiction. Accordingly, as the MCOCA offence is founded on past criminal record of the applicant, that cannot be the basis to cancel the bail operating in favour of the present applicant.*

9. *The argument, though attractive at the first blush, in my opinion, is devoid of substance in the present case, the applicant has been arrested in connection with the C. R., which was originally registered for offences under Indian Penal Code and Arms Act, which is the ordinary law. The applicant was ordered to be released on bail by order dated 4th February, 2005 before filing of the chargesheet and investigation was in progress. It is not necessary to go into the justness of the reasons recorded by the Lower Court in ordering release of the applicant on bail. Incidentally, it may be mentioned that the court has observed that investigation is already completed and the presence of the applicant was no more required by the police for the purpose of investigation and that the weapons in questions were already recovered from the accused. The fact that earlier C.Rs. were already registered against the applicant, though according to the Public Prosecutor was brought to the notice of the concerned Judge, is not adverted to in the impugned order while releasing the applicant on bail. In that sense, it is possible to proceed on the basis that the relevant material which was available was not considered on the earlier occasion while bail was granted to the applicant. In this backdrop, it is contended on behalf of the applicant that the material which was otherwise available to the prosecution and not produced, that cannot be the basis for cancellation of bail. This submission overlooks the fact that the offence which has been added to the pending C.R. against applicant is under the special enactment namely, M.C.O.C. Act. The said offence could be registered by the police only after formal approval is given by the competent authority. Proposal to give such formal approval was moved by the investigating agency only on 4th February, 2005. The applicant was already ordered to be released on bail before the proposal for formal approval was accorded. The applicant was directed to be released on bail by order dated 4th February, 2005, whereas the formal approval for recording information regarding offences under provisions of M.C.O C. Act was granted by the Competent authority on 10th February, 2005. It is only upon grant of such formal approval that the offence under M.C.O.C. Act could be registered and investigated into and not otherwise. This is obviously a subsequent development which can be and ought to*

be considered by the court for cancellation of bail. The fact that the offences under the provisions of MCOCA are founded on the previous offences will make no difference. Be that as it may, one more offence has been registered against the applicant on 21st February, 2005 with the Bund Garden Police Station, Pune. Accordingly, the prosecution approach the Court for cancellation of bail by a formal application on 25th February, 2005 on the assertion that now provisions of M.C.O.C. Act have been applied against the applicant, as a consequence of which the bail in favour of the applicant relating to the offences under Indian Penal Code and Arms Act will be of no avail. Instead the applicant will have to be taken into custody in relation to the newly registered offence under M.C.O.C. Act. And the applicant can be released on bail only if the applicant was to satisfy the rigours of the provisions of the Special enactment. This stand of the prosecution has found favour with the Sessions Court as can be seen from the order which is impugned in this application. If this is the course adopted in the present case, in my opinion, it is not only because of the subsequent development which has come on record but also by necessity of law, in view of the stringent provisions of M.C.O.C. Act. It is not in dispute that although the order of bail was granted in favour of the applicant but admittedly, he has not availed of that bail and that he is in custody in connection with some other offence.”

17. Regular Bail granted to Accused Nos. 2 and 3 in C.R. No. 770/2025 is cancelled by the Court of the Judicial Magistrate First Class, by order dated 21.02.2026, passed in C.R. No. 770/2025, upon the addition of offences punishable under the MCOC Act.

18. The contentions of Mr. Fakhruddin Khan, learned Advocate for the Respondent, that the order dated 21.02.2026, passed in C.R. No. 770/2025, cancelling the bail of Accused Nos. 2 and 3 is illegal and/or in breach of the principles of natural justice, are liable to be rejected for more than one reason: *first*, Accused

Nos. 2 and 3 have apparently not raised any grievance and Mr. Fakhruddin Khan has not placed any material on record indicating that Accused Nos. 2 and 3 have challenged the said order dated 21.02.2026; *second*, the Applicant is not a person aggrieved by the cancellation of the bail granted to Accused Nos. 2 and 3. Even otherwise, assuming that the Respondent can raise any issue regarding the cancellation of the bail granted to Accused Nos. 2 and 3, there is no challenge to the order dated 21.02.2026 passed in C.R. No. 770/2025 at the instance of the Respondent.

19. In the wake of the above and the pronouncement of the Hon'ble Supreme Court in the case of Sumit (supra), this is a fit case for the grant of the reliefs prayed for by the Applicant. For all the above reasons, this Application is allowed in terms of prayer clauses (a) and (b). Consequently, permission to arrest the Respondent in C.R. No. 770/2025 is granted.

20. The Criminal Interim Application No.944 of 2026 stands disposed of.

(ASHWIN D. BHOBE, J.)