



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

**CRIMINAL APPLICATION (BA) NO.163 OF 2024**

**Adarsh s/o Anil Khare**

**..VS..**

**State of Maharashtra, thr.PSO PS Sitabuldi, Nagpur**

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

Court's or Judge's Order

.....  
Shri S.P.Bhandarkar, Counsel for the Applicant.  
Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) with Shri U.R.Phasate, Addl.P.P.  
for the State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**CLOSED ON : 24/09/2024**

**PRONOUNCED ON : 30/09/2024**

1. By this application, the applicant seeks regular bail in connection with Crime No.397/2020 registered with the non-applicant/police station for offences punishable under Sections 143, 144, 147, 148, 149, 302, 341, 120-B, 201 and 212 of the Indian Penal Code read with 3/25 and 4/25 of the Indian Arms Act and 135 of the Bombay Police Act and 3 of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act).

2. The applicant is arrested on 28.9.2020 and since then he is in jail.

3. The crime is registered on the basis of a report lodged

by Police Constable Anil Lande alleging that when he was performing his duties on 26.9.2020, at around 4:15 pm, two unknown persons informed that a car driver is being assaulted by five assailants at Bhole Petrol Pump Square. Accordingly, he rushed to the spot immediately and found a person lying on the road beside Hyundai Verna Car bearing Registration No.MH-49/AS/200 and his clothes were stained with blood. He had sustained various injuries all over the persons. Upon inspection of the car, one pistol magazine was found and name of the deceased disclosed as Balya Binekar. During course of investigation, various incriminating articles like country-made pistols, live cartridges, and chilly powder were seized. Death of the deceased was due to head injury, stab, and multiple injuries over abdomen. On obtaining CCTV Footage, involvement of co-accused revealed. It further revealed during investigation that there was a previous enmity between co-accused Chetan Hajare and the deceased and due that previous dispute, the deceased was eliminated. As far as the applicant is concerned, it revealed during investigation that the co-accused asked the applicant to procure knives and accordingly, he placed an order on Flip-Cart and Amazon and procured knives and handed over to the co-accused which which were used by the co-accused. It further

revealed to the investigation agency that co-accused Chetan Hajare is leader of the “Organized Crime Syndicate” against whom 14 offences are registered. The applicant is also associated with the said gang and in pursuance of a conspiracy hatched by the applicant and other co-accused, the deceased was eliminated.

4. Heard learned counsel Shri S.P.Bhandarkar for the applicant and learned Public Prosecutor Shri D.V.Chauhan for the State.

5. Learned counsel for the applicant submitted that initially, the applicant had filed an application for grant of bail. The said application was rejected without assigning any reasons that how bar under Section 21(4) of the MCOC Act is attracted. This court has not considered that the applicant has played a very limited role and rejected the application. While deciding the earlier application, rigor under 21(4) of the MCOC Act was not considered and there is no reasoning as to satisfaction that *prima facie* case is made out against the applicant. the applicant is behind the bars since last four years. There is a delay in trial. The applicant cannot be put behind the bars for an indefinite period as there is no substantial progress in the trial. No overt act is attributed to the

applicant and, therefore, the application of the MCOC Act itself is a doubtful. He invited my attention to definitions of “continuing unlawful activity” and “Organized Crime Syndicate” and submitted that by no stretch of imagination, it reveals from investigation papers that the applicant was a member of the “Organized Crime Syndicate” and rigor under Section 21(4) of the MCOC Act is attracted.

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

**(1) State of Maharashtra vs. Jagan Gagansingh Nepali @ Jagya, reported in 2011(5) SCC 386;**

**(2) Deepak Madhavrao Mankar vs. State of Maharashtra, reported in 2019 SCC OnLine Bom 8036;**

**(3) Prasad Shrikant Purohit vs. State of Maharashtra, reported in (2015)7 SCC 440;**

**(4) State of Maharashtra vs. Lalit Somdatta Nagpal, reported in (2007)4 SCC 171;**

**(5) Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra, reported in (2005)5 SCC 294;**

**(6) State of Maharashtra vs. Shiva @ Shivaji Ramaji Sonawane, reported in (2015)14 SCC 272;**

**(7) Rajendra vs. State of Maharashtra, reported in 2020 SCC OnLine Bom 9322;**

**(8) Narendra Singh vs. State of Madhya Pradesh,**

reported in (2004)10 SCC 699;

(9) Criminal Writ Petition No.1959/2021 (Shabhana Parveen vs. State of Maharashtra);

(10) Criminal Application (ABA) No.10/2024 (Imam Khan vs. State of Maharashtra);

(11) The State of Gujarat vs. Sandip Omprakash Gupta, reported in 2022 LiveLaw (SC) 1031;

(12) State (NCT of Delhi) vs. Navjot Sandhu alias Afsan Guru, reported in (2005)11 SCC 600;

(13) Union of India vs. K.A.Najeeb, reported in (2021)3 SCC 713;

(14) Mohd.Muslim vs. State (NCT of Delhi), reported in 2023 SCC OnLine SC 352;

(15) Hussainara Khatoun (I) vs. Home Secretary, State of Bihar, reported in (1980)1 SCC 81;

(16) Thana Singh vs. Central Bureau of Narcotics, reported in (2013)2 SCC 603;

(17) Ajit Bhagwan Tiwde vs. State of Maharashtra, reported in 2022 SCC OnLine Bom 4079;

(18) Hari Shankar vs. SFIO, reported in 2024 SCC OnLine Bom 753;

(19) Praveen Rathore vs. State of Rajasthan, reported in 2023 SCC OnLine SC 1268;

(20) Criminal Appeal No.2601-2602/2024 (Ajay Ajit Peter Kerkar vs. Directorate of Enforcement) (Supreme Court);

(21) Criminal Appeal No.2787/2024 (Javed Gulam Nabi Shaikh vs. State of Maharashtra and anr) (SC);

**(22) Criminal Misc. Bail Application No.12925/2023  
(Appeal No.Vikas Kumar vs. State of Rajasthan)  
(Rajasthan High Court), and**

**(23) Bail Application No.30/2024 (Bansi Lal vs. U.T. of  
J&K).**

7. *Per contra*, learned Public Prosecutor for the State strongly opposed the application on ground of maintainability. He submitted that once application is rejected on merits, the same cannot be entertained unless there is a change in circumstance. He submitted that though it is true that personal liberty cannot be taken away, except in accordance with procedure established by the law, it is also true that a person whose application for enlargement on bail is once rejected, the same is not precluded from filing subsequent application, but there has to be some change in circumstance. He submitted that perusal of the application would show that no change in circumstance is pointed out by learned counsel for the applicant and, therefore, on that ground itself, the application deserves to be rejected. As far as merits of the matter is concerned, investigation papers show association of the applicant with the co-accused. The CDRs collected during the investigation show that there are consistent calls between the applicant and the leader of the “Organized Crime Syndicate”. The calls are not only

prior to the incident but also on the date of the incident. He submitted that the CDRs of the applicant and co-accused Chetan Hajare are sufficient to show association of the applicant with the leader of the "Organized Crime Syndicate". Besides that, investigation papers show that on the say of the co-accused, the applicant placed order for purchasing knives on Flip Cart and said knives four in numbers are delivered at the address of the applicant and statement of the applicant recorded under Section 18 of the MCOC Act shows that said knives are handed over to the leader of the "Organized Crime Syndicate". Subsequent to that, the applicant also placed order for purchasing an axe on Amazon and the said axe was delivered to the address of the co-accused, who is the leader of the "Organized Crime Syndicate". The panchanama of mobile phone of the applicant and tax invoice show purchase of knives as well as the axe. The statement of the delivery boy also shows he delivered the said articles to the applicant. Thus, sufficient material is on record to show that the applicant was involved in the conspiracy and in pursuance of the said conspiracy, he placed order for knives and axe and handed over the same to the co-accused. The consistent calls between the applicant and the leader of the "Organized Crime Syndicate" sufficiently shows his association with

the co-accused who is the leader of the “Organized Crime Syndicate”.

8. In support of his contentions, learned Public Prosecutor for the State placed reliance on following decision:

**(1) Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and anr, reported in (2005)2 SCC 42, and**

**(2) In Criminal Application (ABA) No.191/2024 (Kishor Pandurang Balpande vs. State of Mah., thr.PSO Wathoda PS, Taluka and District Nagpur) decided by this court on 28.3.2024.**

9. In the light of the above well settled law, it is necessary to deal with the first objection raised by learned Public Prosecutor that, once an application for grant of bail is rejected by considering merits, unless there are change in circumstances, second application is not maintainable. He invited my attention to order passed by this court in Criminal Application BA No.1361/2021 wherein after referring submissions, this court observed in paragraph Nos.7 and 8 that chargesheet is perused and from the chargesheet it can be seen that there is a material available which *prima facie* shows involvement of the applicant in the alleged offence. As far as provisions of the MCOC Act are concerned, it is a matter of trial. In

the light of the *prima facie* incriminating evidence available on record, there is no reasonable ground to believe that the applicant is not guilty.

Thus, from the said order it is apparent that on perusing the entire chargesheet, the court came to a conclusion that there is a *prima facie* material and rejected the application.

10. The present application is filed on ground that no satisfaction is recorded by this court, while rejecting the application, that there are reasonable grounds to believe that the applicant is guilty. Thus, there is no observation as to application of rigor under Section 21(4) of the MCOCA Act.

11. The Hon'ble Apex Court in the case of **Kalyan Chandra Sarkar** *supra* observed that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the

grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

12. In the case of Prasad Shrikant Purohit *supra*, the Honourable Apex Court held that, “we must note that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications.”

13. In the case of **State of Tamil Nadu vs. S.A.Raja, reported in (2005)8 SCC 380**, the Hon’ble Apex Court observed that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application

should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

14. In the case of State of **M.P. vs. Kajad**, reported in **(2001)7 SCC 673**, also the Hon'ble Apex Court made the similar observations that it is true that successive bail applications are permissible under the changed circumstances. But, without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under the criminal law as has been held by this court in the case of **Hari Singh Mann vs. Harbhajan Singh Bajwa**, reported in **(2001)1 SCC 169** and various other judgments.

15. In the light of the above observations of the Hon'ble Apex Court, if the earlier order passed by this court is considered, it is specifically mentioned by the Co-ordinate Bench that from the chargesheet it can be seen that there is a material available which *prima facie* shows involvement of the applicant in the alleged

offence. It has further been observed that in the light of the *prima facie* incriminating articles available on record, there is no reasonable ground to believe that the applicant is not guilty.

16. Learned counsel for the applicant though submitted that there is no reference as to the rigour, the observations of the court, that in the light of *prima facie* incriminating material available on record, there is no reasonable ground to believe that the applicant is not guilty, sufficiently show that the Co-ordinate Bench has recorded satisfaction before rejecting the application. It is well settled that at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case.

As such, the contention of learned counsel for the applicant that while rejecting the earlier bail application, there was no satisfaction recorded as to how rigor under section 21(4) of the MCOC Act is attracted, is not sustainable.

17. Now, coming to the another aspect, that whether there

is a nexus between the applicant and members of the “Organized Crime Syndicate”, 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”. It has been observed that 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”.

18. 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.

19. Learned counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **Prasad Shrikant Purohit** *supra* and submitted the applicant is not shown to be involved in any criminal activities of the alleged "Organized Crime Syndicate". Since there is no nexus between the applicant and other members of the "Organized Crime Syndicate", the applicant is roped under the MCOC Act. However, in the case of **Prasad Shrikant Purohit** *supra* the Hon'ble Apex Court in paragraph No.89 observed, as under:

**"89.** A reading of paragraph 31 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

organized crime, if a nexus either with an accused who is a member of an 'organized crime syndicate' or with the offence in the nature of an 'organized crime' is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an 'organized crime', but when the nexus of such person with an accused who is a member of the 'organized crime syndicate' or such nexus is related to the offence in the nature of 'organized crime' is established by showing his involvement with the accused or the offence in the nature of such 'organized crime', that by itself would attract the provisions of MCOCA. The said statement of law by this Court, therefore, makes the position clear as to in what circumstances MCOCA can be applied in respect of a person depending upon his involvement in an organized crime in the manner set out in the said paragraph. In paragraphs 36 and 37, it was made further clear that such an analysis to be made to ascertain the invocation of MCOCA against a person need not necessarily go to the extent for holding a person guilty of such offence and that even a finding to that extent need not be recorded. But such findings have to be necessarily recorded for the purpose of arriving at an objective finding on the basis of materials on record only for the limited purpose of grant of bail and not for any other purpose. Such a requirement is, therefore, imminent under Section

21(4)(b) of MCOCA.”

Thus, the Hon’ble Apex Court by referring the decision in the case of **Ranjitsing Brahmajeetsing Sharma** *supra*, relied upon by learned counsel for the applicant, observed that even if a person may or may not have any direct role to play as regards the commission of an organized crime, if a nexus either with an accused who is a member of an “Organized Crime Syndicate” or with the offence in the nature of an “Organized Crime” is established that would attract the invocation of Section 3(2) of MCOCA. Therefore, even if one may not have any direct role to play relating to the commission of an “Organized Crime”, but when the nexus of such person with an accused who is a member of the “Organized Crime Syndicate” or such nexus is related to the offence in the nature of ‘organized crime’ is established by showing his involvement with the accused or the offence in the nature of such ‘organized crime’, that by itself would attract the provisions of MCOC Act.

20. Learned counsel for the applicant further placed reliance on **Shabhana Parveen vs. State of Maharashtra** *supra*, wherein also this court at Principal Seat observed that It is the membership of the “Organized Crime Syndicate” which makes a

person liable under the MCOC Act. What is of significance is the nexus or the link of the person with “Organized Crime Syndicate”. It is not the requirement of law that two charge-sheets for the cognizable offences punishable with imprisonment for three years or more need be filed against each of the members of such syndicate.

Thus, what is required is to show that there was a nexus with members of the “Organized Crime Syndicate”.

21. Another ground raised by learned counsel for the applicant for grant of bail is delay in trial.

The trial is already commenced and seven witnesses are already examined.

22. Learned counsel for the applicant placed reliance on the decision of the Hon’ble Apex Court in the case of **Union of India vs. K.A.Najeeb** *supra* wherein it has been observed that gross delay in disposal of such cases would justify the invocation of Article 21 of the Constitution and consequential necessity to release the under trial on bail. No one can justify gross delay in disposal of cases when under trials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

23. The Hon'ble Apex Court in the case of **Gurwinder Singh vs. State of Punjab and anr**, reported in AIR 2024 SC 952 distinguished the case of **Union of India vs. K.A.Najeeb** *supra* and observed that the appellant has been in jail for last five years and it is further observed that in the case of **Union of India vs. K.A.Najeeb** this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. It is further observed that mere delay in trial pertaining to grave offence as one involved in the instant case cannot be used as a ground for grant of bail.

24. Thus, material on record as discussed above, especially confessional statement of the applicant and CDRs showing consistent calls between the applicant and leader of the "Organized Crime Syndicate", and documents collected during investigation showing that the applicant has placed orders OnLine for purchasing

weapons and handed over the same to the leader of the “Organized Crime Syndicate”, a *prima facie* case is made out against the applicant and it also established the nexus between the applicant and members of the “Organized Crime Syndicate”. While considering bail application when offence is committed under the special statute like MCOC Act having regard to the provisions contained in Section 21(4) of the MCOC Act, the court has to probe into the matter deeper so also enable it to arrive at a finding that materials collected during the investigation may not justify 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 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 has possessed of the requisite *mens rea*. While dealing application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under the Indian Penal Code, the relevant provision in the said statute, namely, Section 21(4) has to be kept in mind.

25. Thus, the 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 "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds.

26. Considering the material on record disclosing involvement of the applicant in procuring weapons and handing over the same to leader of the "Organized Crime Syndicate" and CDRs showing consistent calls including calls on the day of the incident, it is difficult to come to conclusion that the applicant is not guilty of offences on the basis of "reasonable grounds". The expression "reasonable grounds" 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.

27. In view of the above said well settled legal position, as

there are no change in circumstances, the application deserves to be rejected. At the same time, there is a sufficient material on record to conclude that involvement of the applicant is apparent and there is no material to hold that he is not guilty of offences and, therefore, rigor under Section 21(4) of the MCOC Act comes into play.

28. In the light of the above, the application stands **rejected** and **disposed of** accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!