IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3778 OF 2024

Gopal Radheshyam Yadav
Santosh Bhavan, Valia Pada, Age -23
Nalasopara East, Mumbai – 401208
Also at:
S/o Radheshyam Yadav,
Paseva, Pasewan, Dist. Jaunpur,
Uttar Pradesh – 222142
Currently lodged in Thane Central Jail .. Applicant

Versus

State of Maharashtra
(At the instance of Tilak Nagar,
Dombivli Police Station). .. Respondent

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- Mr. Prashant Pandey a/w. Ms. Ridhima Mangaonkar, Mr. Krishna Joshi and Mr. Pramod Sharma, Advocates i/by W3Legal LLP for Applicant.
- Ms. Sangita E. Phad, APP for Respondent - State of Maharashtra.

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CORAM : MILIND N. JADHAV, J.
DATE : DECEMBER 16, 2024

ORAL JUDGEMENT:

1. Heard Mr. Pandey, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent - State of Maharashtra.

2. This Criminal Bail Application is filed by Applicant who is arraigned as Accused No.2. His name is Gopal Radheshyam Yadav. Accused No.1 is Mahendra Yadav whereas Accused No.3 is Vikas Mahendra Singh. Accused No.2 seeks enlargement on bail in Crime No.I-131 of 2018 of Tilak Nagar Police Station, Dombivli registered on 03.08.2011 under Sections 307, 325, 397, 341 read with Section 34 of

Indian Penal Code, 1860 (for short '**IPC**'), Section 135 and 37(1)(3) of Bombay Police Act, 1951, Sections 1 and 3 of the Arms Act, 1959 and Section 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crime Act (for short '**MCOC Act**').

3. The Applicant has been apprehended and arrested on 03.08.2018 and has been in custody for the past 6 years 4 months and 18 days. The incident is of 02.08.2018 when the First Informant – Pradeep Jain alongwith his associate Mr. Kesar Singh Rajput who was riding the scooter were accosted at about 10:45 p.m. by Accused Nos.2 and 3 when they reached home. It is prosecution case that both above Accused tried to snatch the handbag carried by First Informant which contained key of his jwellery shop on the assumption that it contained valuables. Statement of First Informant is at page No.73 which states that the incident occurred between 10:30 p.m. to 10:45 p.m. on 02.08.2018. This Statement was recorded at about 04:00 a.m. on 03.08.2018. Supplementary statement of First Informant was recorded on 04.08.2018. Both these statements are appended at page Nos.73 and 75 of Bail Application.

4. In the first statement, First Informant attributed the appearance of the present Applicant as having worn blue t-shirt and white jeans and being the person who fired from the weapon on him at the time of incident. However, in the supplementary statement, the

First Informant – Complainant has stated that Accused No.3 – Vikas Singh fired at him from the weapon and in so far present Applicant Accused No.2 – Gopal Radheshyam Yadav is concerned, he injured him with the knuckle fighter on his head. At the outset, there is *prima facie* dichotomy in the twin statements of Complainant which is noticed. Admittedly, both Accused Nos.2 and 3 were apprehended by two policemen and passers-by on the Complainant and his manager - Kesar Singh Rajput raising an alarm. On search before panch witnesses states knuckle metal fighter was recovered from Accused No.3 and one *gupti* (traditional small swordstick) was recovered from Accused No.2 i.e. present Applicant. The alleged weapon i.e. gun was admittedly not recovered from Accused No.2. Accused No.1 was arrested much subsequently after almost three weeks.

5. Mr. Pandey would draw my attention to the crime registered against Accused No.1 vide No.I-200 of 2018 under Sections 392 and 341 read with Section 34 of IPC and would submit that this First Information Report (for short '**FIR**') was registered on 29.11.2018 with the Kapurbawdi Police Station, Thane wherein the present Applicant is arraigned as Accused but would contend that the said offence dates back to 27.07.2018 and predates the offence in the present case on 02.08.2018. While drawing my attention to the date of incident in the present offence which is on 02.08.2018, he would submit that registration of offence on 29.11.2018 against Accused No.1 cannot

termed to be predicate offence for indicting the present Applicant on the premise of having nexus or being an accomplice of Accused No.1 who is also indicted in several other crimes. He would submit that it is only with the intention of bringing the charge in the present offence under the MCOC Act that registration of the predicate offence is shown by prosecution, but admittedly the FIR therein has been registered on 29.11.2018 and therefore applicability of provisions of MCOC Act would not and should not be held applicable against the present Applicant. *Prima facie* the above dates are not disputed.

6. Ms. Phad has drawn my attention to the fact that apart from the present FIR in respect of offence which occurred on 02.08.2018 and the alleged predicate offence registered vide FIR dated 29.11.2018, Applicant is also involved in two other offences which have been registered in District – Jaunpur, State of Uttar Pradesh which are prior in point of time. One of offence is under Arms Act, 1959 and other offence is under the IPC.

7. On the legality of indictment of Applicant under MCOC Act, Mr. Pandey would submit that its invocation is unwarranted in view of the fact that the present Applicant has not been part of any of the offences wherein Accused No.1 has been involved or any of the FIR registered against Accused No.1. He would draw my attention to the decision of Supreme Court in the case of ***Mohamad Iliyas Mohamad***

Bilal Kapadiya Vs. State of Gujarat[1] and would contend that conditions enumerated by the Supreme Court in the aforesaid decision in respect of predicate offences are clearly not fulfilled and would submit that there is no case registered of which cognizance has been taken or chargesheet has been filed imposing any sentence of imprisonment upto three years or more than three years in the preceding ten years for requiring invocation of provisions of MCOC Act against Applicant. He would also contend that no chargesheet has been filed before any Competent Court in that regard or any Court has taken cognizance of any such offence thereby enabling the prosecution to invoke prosecution under MCOC Act and to call the Applicant as being member of an organised crime syndicate or acting in such syndicate run by Accused No.1. He has placed reliance on the following decisions in support of his above propositions:-

(i) ***Girish Kumaran Nayar Vs. The State of Maharashtra***[2].

(ii) ***Maruti Navnath Sonawane Vs. the State of Maharashtra***[3].

(iii) ***Tatyasaheb Laxman Karande Vs. The State of Maharashtra***[4].

(iv) ***State of Gujarat Vs. Sandip Omprakash Gupta***[5].

(v) ***Sachin Damodar Ekhatpure Vs. The State of Maharashtra***[6].

(vi) ***Dipak Bhimrao Patil Vs. The State of Maharashtra***[7].

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1 Petition for Special Leave to Appeal (Crl.) NO.1815 of 2022, decided on 30.05.2022.
2 Criminal Bail Application No.2241 of 2018 (decided on 17.02.2021).
3 Criminal Appeal No.198 of 2022 decided on 04.05.2022.
4 Criminal Bail Application NO.684 of 2020 decided on 14.10.2022.
5 Criminal Appeal No.2291 of 2022 (arising out of SLP (Criminal) No.6101 of 2021).
6 Criminal Bail Application No.2830 of 2022 (decided on 31.01.2023).
7 Criminal Bail Application NO.1188 of 2023 (decided on 15.09.2023).

(vii) ***Anand Narhari Phadtare Vs. The State of Maharashtra and Ors***[8].

(viii) ***Dipak P. Mali Vs. The State of Maharashtra***[9].

8. On the basis of aforesaid decisions, Mr. Pandey would urge the Court to invoke parity on behalf of Applicant for seeking his enlargement on bail in view of the order dated 10.05.2024 passed by this Court enlarging Accused No.3 i.e. Vikas Mahendra Singh on bail. He would submit that Applicant has being in long incarceration since his arrest for a period of 6 years and 18 days. The trial has not been progressed, as also, no charges have been framed till date and therefore to preserve the substantive right of liberty of Applicant under Article 21 of the Constitution of India and on the other hand speedy justice not being seen, enlargement of Applicant on bail is deservedly required to be granted by Court.

9. Ms. Phad has vehemently objected enlargement on bail and the Bail Application of the Applicant by contending that there is a reasonable nexus of the present Applicant with the leader of the organised crime syndicate namely Accused No.1 – Mahendra Yadav as he has been part of his crime syndicate. She would submit that Accused No.1 is indicted in atleast six serious crimes, details of which have been taken into cognizance while passing the previous bail order in respect of Accused No.3 and if the said list is seen, it cannot be ruled

8 Criminal Bail Application No.409 of 2022 (decided on 30.10.2023).
9 Criminal Bail Application No.1905 of 2023 (decided on 10.04.2024).

out that Accused No.2 can be said as not to be a part of the organised crime syndicate. She would derive support from the definition of "continuing unlawful activity" under Section 2(d) of MCOC Act in support of the above submission as also definition of "organised crime" and "organised crime syndicate under Sections 2(d), 2(e) and 2(f) which are found to be relevant and are reproduced hereinbelow for immediate reference:-

> *"Section 2(d) – "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;*
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> *Section 2(e) – "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;*
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> *Section 2(f) – "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime."*

10. While drawing my attention to the aforesaid definitions, she would submit that the twin requirements namely the fact that activity ought to have been undertaken singly or jointly as a member of an organised crime syndicate and one or more charge-sheets have been filed in the preceding period of ten years in such activity stands fulfilled in this case in so far Accused No.1 as the leader of the

organised crime syndicate is concerned and therefore on a conjoint reading of the three aforesaid definitions of "continuing unlawful activity" and "organised crime" under MCOC Act would have to be invoked by the Court in the present case against Applicant – Accused No.2 and in that view of the matter, on his having a reasonable nexus been established with the activity of Applicant, he would have to be considered as part of the group headed by Accused No.1 of the organised crime syndicate collectively and therefore would not deserve to be enlarged on bail.

11. Ms. Phad would submit that in the case of Accused No.3, in the order dated 10.05.2024 passed by this Court while enlarging him on bail, the provision of Section 18 of MCOC Act was not brought to the notice of the Court. She would draw my attention to the Affidavit-in-Reply dated 29.11.2024 filed by Mr. Suhas G. Hemade, Commissioner of Police, Dombivali Division, Thane City, District – Thane appended at page No.529 of Bail Application and would refer to the statement dated 15.10.2018 of Accused No.1 after he was apprehended. This statement is appended at page No.578 to 580. She would submit that this statement has been recorded by the Deputy Commissioner of Police, Bhiwandi and this confessional statement is recorded under Section 18 of the MCOC Act. If seen and read, it will have to be taken into cognizance by this Court for ascertaining the clear role of Applicant in the crime. She has taken me through the said statement

to contend that Accused No.1 has confessed having committed a predicate offence on 29.07.2018 i.e. four days prior to the date of the present incident. Though she would candidly agree that FIR has been registered belatedly in November -2018 but would contend that this Court will have to take into cognizance the involvement of Applicant in the said predicate offence as he has been specifically named by Accused No.1 in his statement.

12. In so far as the present incident on 02.08.2018 is concerned, the said statement describes the version of Accused No.1 who has admitted to be present at the scene of crime and spot of incident and having witnessed the same. The statement is recorded after two and half months after the date of incident and Accused No.1 has stated that in so far as the present incident is concerned, he is not sure as to whether it was Accused Nos.2 or 3 who fired the bullet from the weapon. He has further stated that in the commotion which took place thereafter both Accused Nos.2 and 3 attempted to flee from the incident spot but Accused No.2 tripped and fell down and was apprehended by the passers-by. There is no mention of Accused No.2 in this confessional statement as he states that he panicked thereafter and left the scene of crime. This statement has been recorded by Deputy Commissioner of Police - Mr. Ankit Goyal. In this regard my attention is drawn to Section 18 of MCOC Act. For reference, sub-Section (1) of Section 18 of MCOC Act, which is relevant is reproduced

below:-

> *"Section 18 (1) - Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirtor :*
>
> *Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.*"

13. From the above, it is seen that such a confession will have to be recorded by the person before a Police Officer not below the rank of Superintendent of Police. Though Mr. Pandey has raised an objection that the statement has been recorded in front of the Deputy Commissioner of Police. Ms. Phad has placed before me the decision of the Supreme Court in the case of ***Zakir Abdul Mirajkar Vs. State of Maharashtra and Others***[10] which was referred to in my previous order dated 10.05.2024 and would draw my attention to the conclusion arrived by the Supreme Court in paragraph No.65 therein to contend that the said confessional statement is recorded by the appropriate authority and is therefore required to be taken into account and invoked by this Court in this case. As rightly recorded the Supreme Court has held that the authority attached to the post of Deputy Commissioner of Police to record the statement under Section 18 is not diluted when the posting is in the District either as an Additional SP or

10 2022 SCC OnLine SC 1092.

as the case may, as an SP. I have perused paragraph No.65 of the said decision which is relevant and Ms. Phad appears to be right in her contention. Be that as it may, confessional statement will stand on its own merits as it is recorded.

14. There is one more factual issue which needs to be delineated in order to see the dichotomy in the prosecution case and the statements recorded. The three eye witnesses statements are appended at page Nos.557 to 561 to the Affidavit-in-Reply filed by the prosecution. The first statement is of Pradeep Jain – Complainant recorded on 16.08.2018. The Complainant on 16.08.2018 states that on the date and time of the incident, both Accused Nos.1 and 3 indiscriminately started firing at them and only thereafter Accused No.2 injured him with a knuckle fighter whereas he caught hold of Accused No.3 and tried to snatch the pistol from his hand. Because of the commotion, the crowd had gathered. This confession is given by him on 16.08.2018. Mr. Ramesh Parasmal Nahar is another eye witness to whom Complainant had called for and who was present nearby. His statement is that after he heard the shout of Complainant, he rushed to the incident spot and saw that Accused No.2 and Complainant had entered into a conflict by catching each other's shirt collars and the cloth bag whereas Accused No.3 was inserting bullets in his pistol. The third eye witness – Kesar Singh Rajput was present as he rode the scooter on which Complainant was the pillion rider. He

has stated that their scooter was accosted at the incident spot by one person holding a gun in his hand upon which he left the scooter and ran from the spot and instructed Complainant to run awaytoo. Thereafter he has stated that he heard the cries of the Complainant for help and he alongwith Ramesh Nahar approached the Complainant and saw that that he was injured. Nothing else is stated about the present Applicant by this eye witness.

15. Thus as delineated hereinabove on the merits of the matter and happening of the incident, there is a clear dichotomy expressed in the statements recorded by the prosecution witnesses and the Complainant beginning with lodging of FIR on 03.08.2018. Uncertainty clearly prevails.

16. Ms. Phad has placed reliance on the following decision of Division Bench of this Court in the case of ***State of Maharashtra Vs. Vishwanath Maranna Shetty***[11] to contend that apparent nexus has been established with respect to involvement of Applicant in a predicate offence committed by him prior to commission of the present offence and that should be good enough for the Court to invoke provisions of MCOC Act against Accused No.2 – Applicant and reject his Bail Application. I have perused the above decision. In that case, the issue of nexus has been discussed by the Court and in so far as Applicant therein was concerned, the issue of nexus was clearly determined on

11 (2012) 10 Supreme Court Cases 561.

the basis of four significant *prima facie* findings of facts which has been stated in paragraph No.18 of the said decision. *Prima facie*, nexus was not only established in that case but was also proved and therefore indictment and involvement of the Applicant therein was seen to be proven *prima faice* and it satisfied the ingredients of offence punishable under Section 4 of the MCOC Act which was attracted against the concerned person. Such is however not the case over here.

17. In the present case, the only attempt made by prosecution to invoke provisions of MCOC Act is on the basis of a predicate offence wherein admittedly FIR has been lodged in November – 2018 which is much belatedly. In so far use of pistol is concerned, as observed hereinabove there is a clear confession in the statements recorded as to who used the weapon. In fact statement of Accused No.1 which prosecution happens to rely upon is itself expressing a doubt. If it is prosecution case that Applicant has used the weapon then it is seen that when the Applicant was apprehended by two Police constables alongwith passers-by the said pistol was not recovered from him.

18. In view of the above observations and findings, I am inclined to accept the submissions made by Mr. Pandey. Applicant is in incarceration for a period of more than 6 years and 18 days and there are no steps taken by prosecution for framing the charge till this date. Resultantly, in view of the speedy justice and trial being on the anvil,

the liberty of the Applicant suffers. In view of the above, I am of the opinion that Applicant deserves to be enlarged on bail. Hence, the following order:-

(i) Applicant – Gopal Radheshyam Yadav, who is facing trial in MCOC Special Case No.17 of 2018 pending on the file of Additional Sessions Judge, Thane, is ordered to be released on bail in the sum of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties of the like amount;

(ii) Applicant shall report to the Tilak Nagar Police Station, Dombivli, once every month on the first Monday of the month between 11:00 a.m. to 02:00 p.m.;

(iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted;

(iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

v) Applicant shall not influence with witnesses or tamper with the evidence in any manner; and

(vi) Applicant shall keep the Investigating Officer informed

of his current address and mobile contact number and/ or change of residence or mobile details, if any, from time to time, as applicable.

19. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and shall not be considered as an expression of opinion by this Court and is only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

20. In the above terms, Bail Application stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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