**MHKO010027232021**

**ORDER BELOW EXH. 62 IN SPECIAL (MCOCA)CASE No.172/2021**

The accused No.8 Vishal Prakash Wadar was arrested on 06/09/2021 in C.R.No. 123/2021 registered in Rajarampuri Police Station under Section 307, 120B, 323, 143, 148, 149, 341, 427, 504, 506, 188, 269, 270 of the Indian Penal Code, 1860 read with Section 4, 25 Arms Act and Section 51(b) of Disaster Management Act and Section 2, 3 and 4 of the Epidemic Diseases Act, Section 11 of COVID-19 Regulations 2020 and Section 3(1)(ii), 3(2) and 3(4) of MCOC Act. He has filed this application for bail under section 439 of the Criminal Procedure Code.

**2.** The Indictment of the applicant is that the informant Abdul Sattar Mulla was running a hotel and on 06/04/2021 at about 11.15 to 11.25 p.m. he was returning home by closing his hotel by the road from Shahu Toll Plaza to Kolhapur by his car. All the accused stopped his car in front of Hevan Pizza Stores by coming with deadly weapons like sword, hockey sticks, spade and wooden stick by four motorcycles. Accused No.2 Aasu gave a stroke of a hokey stick on the front glass of his car, accused No. 6 Pankaj Powar snatched him from the car, accused No.1 Gendya asked him as to whether he wants to stop their business and threatened saying that he should not come in their way and assaulted him by a spade in on the upper side of his left eye. Aasu told that the friend of informant Ashish is his friend and accused No.4 Nitin Gadiyal told that he has instigated Ashish to file complaint against them under MCOCA Act and tried to accault him by sword on his neck but he missed the blow. Other accused assaulted him by fist and kick blows and they caused damaged to his car. Thus, the crime was registered against the accused and they were arrested. The present applicant was arrested on 6/9/2021 and on initial remand to police custody, he has been remanded to judicial custody.

**3.** It is contended by the applicant that false crime has been registered belatedly after thought in the afternoon of the next day. He was not involved in commission of the crime. He has been falsely implicated in this crime after thought. The alleged incident was occurred during night and it was not possible for the informant to identify all the accused. The applicant was not knowing the informant and he was not in inimical terms with him. The applicant was never the member of Organized Crime Syndicate namely 'S.T. Gang' nor committed any offence being the member of such crime syndicate. Thus, the offences under MCOC Act are not attracted against the present applicant. The informant had sustained simple injuries but he has made exaggerated statements and on the basis of it, the crime u/s.307 of IPC has been registered. The sanction to prosecute the present applicant along with other accused for the offences under MCOC Act has been mechanically accorded. The applicant is a poor person working as a meson and he is the only earning hand in his family. There is no specific role attributed to the present applicant in the alleged crime. Even going by the FIR, there is only allegation against the applicant that he assaulted the informant by fist and kick blows and not by any dangerous weapon. Thus, the offence under Sec.307 cannot be attracted against the applicant.

**4.** Shri. D.N. Pathade, the learned advocate for the applicant submits that the basic requirements to attract the offences under MCOC

Act are absent in this case. To lend support, the learned advocate has relied upon the judgment of the Hon'ble Bombay High Court in ***Shri. Girish Nayar Vs. The State of Maharashtra [2021 ALL MR (Cri) 1409]*** wherein the criminal antecedents of the applicant were placed on record but which chargesheets were considered for his prosecution under MCOC Act was not made clear. The nexus between past criminal activities and present crime was also not established. There was nothing to show that past offences were committed by the applicant were committed as the member of or on behalf of organized crime syndicate. Thus, it was held that that mere proof of past chargesheets is not enough to attract the offnces under MCOC Act. The investigation was completed and the applicant was in custody since last four years. The trial was not likely to commenced within reasonable time. Thus, it was held that the case is fit to grant the bail.

**5.** In ***Bhupendra @ Golu Suryakant Borkar Vs. State of Maharashtra [ 2017 ALL MR (Cri) 1561***, the bail was rejected by the Special Court. It was held that commonality of co-accused and commonality of offences are some indications to attract the offences under MCOC Act. The co-accused of the applicant in that case and in previous cases were almost the same. However, there was no commonality of offences registered against them. Previous offences were not grave. On the basis of material on record, the applicant cannot be reasonably said to have tendency of committing similar offences, if released on bail. As regards *prima facie* case, allegations against the applicant were not in consonance with evidence on record. As such, it was held that the bail cannot be declined.

**6.** In ***State of Maharashtra Vs. Rahul Ramchandra Taru [2011 ALL MR (Cri.) 2100]***, the legal requirements to establish "continuing unlawful activity' as per Section 2(d) of MCOC Act have been explained. It is observed that merely alleging that more than one chargesheets in respect of cognizable offence punishable with imprisonment of three years or more have been filed, is not sufficient. This does not satisfy the requirement of law. In order to constitute "continuing unlawful activity" following requirements of law should be satisfied :

i) more than one chargesheet, alleging commission of cognizable offence punishable with imprisonment of three years or more.

ii) a charge-sheet should consists of averments, alleging unlawful activity undertaken either singly or jointly by the accused;

iii) as a member of organized crime syndicate or on behalf of such syndicate.

iv) the cognizance of such offence is taken by the competent court.

**7.** In ***Dattatray Krishnaji Ghule Vs. State of Maharashtra [ 2007 ALL SCR 609]***, the accused was charged with conspiring or abating commission or facilitation of crime with which Telgi or other Co-accused were associated. It was held that such allegations *per se* may not be sufficient to bring home an offence falling under Section 3(2) of MCOC Act, but bearing in mind that maximum sentence provided u/s.24 of MCOC Act is 3 years and applicants have already been in custody for over two years, it is a fit case to grant bail to both accused.

**8**. The learned advocate for the applicant submits that the police have reported that there were 8 charge sheets filed against the applicant but none of them is under MCOCA. There is no proof to show that they were committed as the member of the Organized Crime

Syndicate, much less for any pecuniary benefits or in relation to any financial transaction. Thus, no offence under MCOC Act is attracted against the present applicant. The trial is not likely to proceed in near future. Thus, according to the learned advocate, considering the guiding principles enunciated in above judgments, the applicant would be entitled to be released on bail,

**9.** The say of prosecution was called and the prosecution has resisted this application by filing say (Exh.65) and on that basis, Shri. V.H. Shukla, the learned PP submits that the applicant was found to be the member of organized crime syndicate and there was his active involvement in commission of the offences as the member of the said crime syndicate. As regards criminal antecedents, a list of previous crimes registered against the applicant has been given in the say which discloses that 8 crimes have been registered u/s.324, 392, 394, 452, 307386 of IPC, and u/s. 12 of prevention of Gambling Act. Secondly, according to the prosecution, the accused No.1 has given the confessional statement u/s.18 of the MCOC Act naming the present applicant and therefore, his involvement in the alleged incident is apparent. If the applicant is released on bail, he will indulge in similar crimes. He will pressurize the prosecution witnesses. Hence, he is not entitled to be released on bail.

**10.** Having anxiously considered the rival submissions, the provision of Section 21(4) of the MCOC Act would be applied for dealing with this application which lays down that no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond unless-

**a)** the Public Prosecutor has been given an opportunity to oppose the application of such release;

**b)** where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

**11.** Now, an opportunity has been given to the prosecution to oppose this application and the prosecution has opposed the same. Thus, the first condition has been satisfied. The second condition has two limbs. Firstly, there should be satisfaction of the Court that there are reasonable grounds to believe that the applicant is not guilty of the offence and secondly, there is no possibility that the applicant will commit any offence while on bail.

**12.** If, the material on record is considered, keeping in mind these two requirements, then it would be clear that the applicant has criminal antecedents but there is nothing on record to show that those offences were committed by him being the member of the organized crime syndicate. There is no material to show that the applicant was indulged in "continuing unlawful activity". The definition of "Organized Crime" as given in Section 2(e) of the Act says that the organized crime means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized 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.

**13.** The objective of gaining pecuniary benefits is completely absent in this case. The alleged incident has taken place due to *inter se* rivalry between the informant and the accused. The learned advocate for the applicant submits that the informant has sustained simple injury over his left eye. If it was caused by the weapon like spade, then it would have caused grievous injury. The alleged incident was taken place in dark st about 11.30 p.m. The complaint was lodged at about 9.30 p.m. on the next day. The reason behind the incident was not with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The informant was alleged to have been assaulted on the ground that he has instigated his friend Ashish to file complaint under MCOCA against the accused. There is no material to suggest that the applicant was the member of organized crime syndicate. As there is no sufficient material to *prima facie* hold that the applicant was the member of organized crime syndicate and he has been indulged in continuing criminal activity within the meanings of the definition of the said terms, the offences under MCOCA cannot be attracted. Thus, it appears that there are no reasonable grounds for believing that the applicant is guilty of the offences under MCOC Ac he is not likely to commit any offence under MCOC Act, if released on bail. Now, the investigation is completed and the chargesheet has been filed.

**14.** All the accused in this case were produced before the Court on earlier date. The case was fixed for framing charge. Most of the accused had yet not engaged their advocates. They are willing to engage private advocates and they were seeking some time for the same. Some of the accused whose bail applications were rejected by this Court were submitting that they have applied for bail before the Hon'ble High Court and the charge may not be framed against them till decision on their bail applications. Under such circumstance, the trial of this case is not likely to commence in near future. Therefore, considering the ratios in above cited judgments, I hold that the applicant would be released on bail on certain conditions. Hence, the following order.

**O R D E R**

1. Bail Application is allowed.

2. The applicant (accused No.8) Vishal Prakash Wadar, who is arrested in Crime No.123/2021 registered in Rajarampuri Police Station under Section 307, 120B, 323, 143, 148, 149, 341, 427, 504, 506, 188, 269, 270 of the Indian Penal Code, 1860 read with Section 4, 25 Arms Act and Section 51(b) of Disaster Management Act and Section 2, 3 and 4 of the Epidemic Diseases Act, Section 11 of COVID-19 Regulations 2020 and Section 3(1)(ii), 3(2) and 3(4) of MCOC Act. be released on bail on his furnishing P.R. of Rs.30,000/- with one surety of like amount on the following conditions :

**i)** The applicant shall not pressurize the prosecution witnesses and shall not tamper with the evidence;

**ii)** The applicant shall not indulge in any offence;

**iii)** The applicant shall not abscond and shall attend all Court dates;

**iv)** Violation of any of the above conditions may entail a ground for cancellation of bail forthwith.

DISTRICT COURTS MAHARASHTRA

Digitally signed by Shivaji Ramchandra Salunkhe
Date: 2023.04.29 17:32:47 +0530

(**S.R. Salunkhe**)
Additional Sessions Judge,
Kolhapur.

Date: 26/04/2023