

ORDER BELOW EXH.-53 IN SPECIAL CASE NO.921/2021

The State of Maharashtra Through Baramati Taluka Police Station

Vs.

Prashant Popatrao More

- 1) Read application.
- 2) The Spl.PP. appeared and resisted the application by filing say at Exh.77 on the basis of say of IO at Exh.57-A on the ground that the offence is serious in nature. The crime was registered vide CR no.350/2021 at Baramati Taluka Police Station against the applicant and co-accused for the offence punishable under section 307, 120-B, 504, 506 of the IPC, under section 3 (25) (27), 4 (25) of the Arms Act. The proposal was sent to level offences punishable under MCOC Act. The proposal was accepted and permission was granted as per section 23 (1) of the MCOC Act to level additional charge under MCOC Act. The FIR and statement of the injured discloses that the juvenile conflict with law Akash who is son of applicant has fired on the injured by pistol to commit murder and then fled away. The incident in question arose due to political rivalry and financial disputes between the injured and applicant and co-accused. The wife of injured i.e. complainant is member of Zilha Parishad, Baramati. The injured used to get the government contract in Baramati area. The present applicant and co-accused are also getting contract of work, due to which there was dispute in between them. In the investigation, it is revealed that the applicant is running a syndicate and involved in continuing unlawful activities singly or jointly as a member of organized crime

syndicate or on behalf of such syndicate by use of violence or threats of violence or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person promoting insurgency. The applicant and co-accused have hatched the conspiracy to commit a murder. The applicant is head of the organized crime syndicate. The criminal cases are registered and pending in which cognizance is taken by the court against the applicant. The applicant is not entitled for the bail and prayed to reject the application.

3) Following points arise for determination. My findings thereon is as under:

| <u>POINT</u> | <u>FINDING</u> |
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| 1. Whether applicant made out case to allow the application? | -- No. |
| 2. What order? | ... Application is rejected. |

REASONS

POINT NO.1 and 2:-

- 4) Heard advocate for applicant and Spl. P.P.
- 5) The advocate for the applicant argued that the offence is registered vide CR no.350/2021 for the offence punishable under section 307, 120-B, 504, 506 of the IPC and under section 25 r/w. S.3 and 27 of the Arms Act at Baramati Taluka Police Station. The FIR is lodged by the wife of injured who is member of the Zilha Parishad. It is alleged that there is motive to commit an offence due to political rivalry but substantial the same there is no evidence on

record. The injured has lodged false cases against the son of applicant Akash who is juvenile conflict with law taking education who is rank holder of 10th and 12th Std. Due to it, his career is spoiled. Due to said reason Akash may fire on the injured. The applicant is no way concern with the said act of Akash and co-accused. The applicant was not present along with co-accused on the spot. He was at Bombay at the time of alleged commission of offence. There is no recovery from the applicant. The muddemal is recoverd from the co-accused no.4. In the statement of injured, name of applicant and other accused is mentioned as he is having suspect on the applicant and co-accused. There is no evidence on record which will show that the applicant is a member of syndicate and he is head of it. The applicant have no role in the alleged crime. There is no nexus of the applicant with the crime. The memorandum of the co-accused and confessional statement are not binding on the applicant. The vehicle and pistol are attached from the co-accused. There is no whisper about the applicant to couple him in the said attachment and muddemal. The injured has assaulted to the applicant. The investigating officer have filed report under section 169 of Cr. P. C. in respect of accused Jaydeep Taware. On the ground of parity as investigating officer has filed report under section 169 of Cr. P. C., the applicant is entitled for bail. Three cases are pending against the applicant and in two cases the applicant is shown wrongly as accused. Prima facie MCOG Act is not applicable to the applicant. The Pero Company watchman has denied that the applicant and injured were at the company, hence the alleged incident in front of Pero company is not trustworthy. As per the observations in 2009 ALL MR (Cri) 1903 Govind Sakharam

Ubhe Vs. State of Maharashtra, the ingredients of applicability of MCOG Act are not fulfilled. There is no evidence about previous crime committed by organized crime syndicate. The injured is discharged. The investigation is completed. No need to keep the applicant behind the bar for offence punishable under section 307 of IPC. He relied on observations of Hon'ble Bombay High Court in Cri. Bail Application no.920/2020 Abhijeet Dilip Tekale Vs. The State of Maharashtra dated 12th March, 2021, the observations of Hon'ble Bombay High Court in Anticipatory Bail Application no.2400/2021 Gulab Uttam Mane Vs. The State of Maharashtra dated 20/12/2021, 2020 CLU 637 SC Prabhakar Tewari Vs. State of U.P, 2015 (1) B Cr. C 450 Lakhya @ Nikhil Prakash Kshirsagar Vs. The State of Maharashtra, 1995 (2) B. Cr. C. 144 Anil @ Babu Balasaheb Marne Vs. State of Maharashtra, 2021 ALL MR (Cri.) 3857 Rakesh Babu Chalwadi Vs. The State of Maharashtra, the observations of Hon'ble Bombay High Court Bench at Aurangabad in Bail Application no.1454/2019 in Sambhaji s/o Pandurang Sathe Vs. The State of Maharashtra decided on 20/12/2019. The rulings on which prosecution has relied are not applicable to the present facts and circumstances and prayed to allow the application.

6) The Spl. PP argued that the offence is serious in nature. The MCOG Act is attracted. The applicant's case is squarely fall under section 21 (1) (d) (e) of the MCOG Act. At the time of deciding bail application there is no need to evaluate the evidence in deep, the prima facie case need to be taken into consideration. As per observations in 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra, the MCOG Act is attracted. The FIR

is lodged by the wife of injured. She has specifically mentioned about illegal acts of the applicant as a head of organised crime. The statement of injured clearly discloses that previously there was quarrel in between him and applicant on account of government contract. So many times the applicant has given threats to him not to obtain contract. The statements of witnesses clearly discloses that the applicant is running crime syndicate and head of the co-accused. The confessional statement of the co-accused Rahul Yadav be taken into consideration which is recorded under section 18 of the MCOC Act. The weapon is attached from co-accused under memorandum under section 27 of the Indian Evidence Act. The photographs of the co-accused are filed on record with weapons and pistol. The applicant and co-accused have displayed hoardings mentioning that, "यम है हम". This fact shows that the applicant and co-accused are having terror in the society. The CDR are collected by the IO which discloses that the co-accused and applicant were in contact. The permission is accorded under section 23 (1) of the MCOC Act to level offence under MCOC Act. For the MCOC Act there is no need to take into consideration whether accused is acquitted or convicted in a previous cases. It is necessary to see that whether previous crimes are registered and court has taken cognizance of it. The applicant is not entitled for bail on the ground of parity as report under section 169 of Cr. P. C. is filed against the co-accused. She relied on AIRONLINE 2022 SC 1325 Zakir Abdul Mirajkar, 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra and prayed to reject the application.

7) I have gone through the charge-sheet and documents

filed along with it. The FIR is lodged by wife of injured Sou. Rohini Raviraj Taware alleging that she is member of Zilha Parishad, Pune. Her husband is helping her to do social work. Her husband is doing construction business. The construction work of the Grampanchayat and other government offices was allotted to her husband. She and her husband are doing development work at the village. Applicant's wife Rekha Mane is elected member of Grampanchayat, Malegaon Budruk from ward no.4. As they have started the development work at ward no.4, the applicant and his wife were resisting and opposing the same. Time to time her husband have tried to convince to the applicant and his brother Vinod More, however, they have not paid any heed to it. They used to pick up quarrel, assault to their followers. Prior to three months the quarrel took place on account of damage of pipe line by the follower Rahul Gavhane while transporting dung in between the applicant and others and Rahul Gavhane. They have taken side of Rahul Gavhane due to which the applicant and his brother and others were grudge against them. The crime was registered against them.

ii) On 31/05/2021 at about 6.45 they visited the house of Saad Shaikh to brought vada-pav. She and husband proceeded towards the house of Saad Shaikh by car. The husband left to brought vada-pav. She was in the car. One white colour bullet on which two persons were riding, out of them pillion rider was son of applicant named as Akash More stopped. They alighted from the bullet motorcycle. She saw that the husband is returning from the house of Saad Shaikh. The Akash More has pointed gun and fired. The husband tried to run towards opposite side. Meantime Akash More has fired second time but it was not fired. At that time he

shouted,"चिकू पाटील तुला सोडणार नाही, तुला कायमचा संपविणार आहे. तु माझे व माझ्या कुटुंबाचे नुकसान केले आहेस". Then they sat on the bullet and proceeded towards Malegaon factory. The persons gathered, at that time they shown the gun to them due to which those persons afraid and started running. The husband was injured and admitted at Baramati hospital and then for further treatment shifted at Giriyan Hospital, Baramati. Hence, the complaint.

8) The crime was registered at Baramati Police Station vide CR no.350/2021 for the offence punishable under section 307, 120-B, 504, 506 r/w.34 of the IPC and under section 25 r/w.4 of the Arms Act. The IO sent proposal to level offences punishable under section 3 (1)(ii), 3(4) of the MCOG Act and said proposal was sanctioned and accordingly offence punishable under MCOG Act are leveled.

9) I have gone through the statement of injured Raviraj Taware. He has given details of the incidence dated 30/07/2019, 13/07/2020, November 2020, December 2020, January 2021, February 2021, 16/02/2021, 30/04/2021, 25/05/2021, 24/05/2021 about dispute, assault and quarrel with him as well as with his followers by the applicant and co-accused due to contract of construction and its monetary benefits etc. He further stated that on 31/05/2021 he visited the house of Saad Shaikh to brought vada-pav along with wife. He parked the car and proceeded to brought vada-pav, meantime the Akash who is son of applicant and other boy came on bullet motorcycle. Prior to it, he saw the co-accused standing at different places. The son of applicant has

fired on him by pistol. He started running to save himself. He tried to fire second time but fire was not succeeded. He uttered words, "माळेगावात कसं, बॉस, जयदिप पाटील व प्रशांत भाउ म्हणल तसं" and then run away. He sustained injuries and mentioned names of accused as they have committed offence.

10) The version of complainant and injured is supported by the witnesses Shailesh Dandvate, Santosh Jadhav, Pramila Lokhande, Vijaykumar Parit, Mithunkumar Nagamwad, Rahul Kalbhor etc. Prime facie from this evidence on record it is clear that there was dispute and grudge in between the complainant, injured and applicant and co-accused on account of pecuniary gain from the construction work.

11) The prima facie evidence is came on record which will show that the co-accused has uttered the words while commission of offence that, "चिकू पाटील तुला सोडणार नाही, तुला कायमचा संपविणार आहे. तु माझे व माझ्या कुटुंबाचे नुकसान केले आहेस", "माळेगावात कसं, बॉस, जयदिप पाटील व प्रशांत भाउ म्हणल तसं". The hoardings were displayed by the applicant and co-accused for the birthday of applicant wherein it is mentioned "यम है हम". The photograph of co-accused Ajinkya Bhosale on D.P. of whatsapp which shows that he is having pistol in his hand and mentioned as "यम है हम".

12) The confessional statement of co-accused Rahul @ Ribel Krushnat Yadav is recorded under section 18 of the MCOC Act, which discloses that the applicant and co-accused were called him at their house and hatched the conspiracy disclosing that the Akash

will fire on the injured as he is minor and he will be released immediately. On 03/06/2021 said accused has given memorandum under section 27 of the Evidence Act and produced the pistol, live cartridges which are attached under panchanama. The said accused has given memorandum on 05/06/2021 and produced the mobile phone which are attached under panchanama. He has given memorandum on 22/06/2021 and produced knife and sickle which are attached under panchanama.

13) It is submitted by the advocate for the applicant that the applicant was at Bombay at the alleged time of commission of offence. The complainant and injured have arraigned juvenile conflict with law Akash who is son of applicant in false cases due to which he has having grudge and upset as his educational career was in danger and he may have committed alleged offence. The applicant is no way concern with it. It is admitted fact that the crimes are registered against the applicant and co-accused. The prima facie evidence on record discloses that the juvenile conflict with law Akash who is son of applicant has fired from pistol on the injured due to which injured sustained the injuries. It is not disputed that the juvenile conflict with law is residing with the applicant. The applicant being father and having a criminal antecedents, definitely know about commission of offence. The CDR brought on record though discloses that the applicant was at Bombay, when alleged crime was committed, there was talk in between co-accused and him. The advocate for the applicant submitted that those talks may be formal or other purpose but from the call record it is clear that the calls are given by the co-accused

to the applicant before and subsequent to the commission of offence. The juvenile conflict with law cannot be presumed that on his own committed offence taking into consideration circumstantial evidence and fact. At this stage the possibility that the applicant hatched the conspiracy and asked to the son Akash who is juvenile conflict with law to commit offence cannot be ruled out as the complainant was very well known that Akash being a juvenile will easily release. There is possibility that to get benefit the applicant has left to the Bombay cannot be ruled out. I am not agreed with the arguments advanced by the advocate for the applicant.

14) The IO has sent the proposal for level charge under MCOC Act and said proposal is granted and allowed to level the offence punishable under MCOC Act. The IO has given schedule in the said proposal sent for permission to level MCOC Act and say filed to the application which discloses that against the applicant, nine crimes are registered at Baramati Taluka and other police station along with co-accused. The court has taken cognizance of the same. Those offences are punishable more than three years. It is submitted by the advocate for the applicant that in two cases the applicant is acquitted, two cases are wrongly mentioned as accused. The MCOC Act is not applicable. To level MCOC Act there is no need to see whether accused are acquitted or convicted in previous cases. Only requirement whether one or more cases are registered in which the punishment is more than three years and court has taken cognizance. I am not agreed with the arguments of advocate for the applicant.

15) The advocate for the applicant argued that the report under section 169 of Cr. P. C. is filed in respect of co-accused Jaydeep Taware. The role of the present applicant is same and one of the said co-accused and applicant is entitled for bail. From the foregoing discussions, I come to the conclusion that there is prima facie evidence against the applicant. I come to the conclusion that on the ground of report filed under section 169 of Cr. P. C. in respect of co-accused, the applicant is not entitled for bail. I am not agreed with the arguments of advocate for the applicant.

16) I have gone through the rulings 2009 ALL MR (Cri) 1903 Govind Sakharam Ubhe Vs. State of Maharashtra and AIR ONLINE 2022 SC 1325 Zakir Abdul Mirajkar Vs. State of Maharashtra, relied by the Spl.PP. wherein it is observed that, requirement to come the offence under section 2 (1) (d) of Maharashtra Control of Organised Crimes Act (1999),

- a) the activity must be prohibited by law;
- b) it must be a cognizable offence punishable with imprisonment of three years or more;
- c) it must be undertaken singly or jointly;
- d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate;
- e) in respect of which more than one charge-sheet have been filed before a competent court.

The words 'in respect of which more than one charge-sheet have been filed' cannot go with the words 'a member of a crime syndicate' because in that case, these words would have read as 'in respect of whom more than one charge-sheet have been filed'. 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'. If this link is not established, that person cannot be roped in. What is contemplated under section 2(1)(d) of the MCOCA 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. I come to the conclusion that the requirement to level the offence under MCOC Act are prima facie fulfilled.

17) I have gone through the observations of **Hon'ble Bombay High Court in Criminal Bail Application no.920/2020 Abhijeet Dilip Tekale Vs. The State of Maharashtra decided on 12/03/2021**, relied by the advocate for applicant, wherein it is observed that, the MCOC Act is not operate against the applicant and applicant is entitled for bail. In foregoing discussions I come to the conclusion that the MCOC Act is attracted against the applicant. I come to the conclusion that said observations are not helpful to the applicant.

18) I have gone through the observations of **Hon'ble High Court in Anticipatory Bail Application no.2400/2021 Gulab Uttam Mane Vs. The State of Maharashtra decided on 20/12/2021**, relied by the advocate for applicant, wherein from the facts it is observed that there is no prima facie evidence of criminal conspiracy against the applicant and released on bail. In the present facts and

circumstances the applicant is father of the juvenile conflict with law who has fired from pistol on the injured. He is having criminal antecedents. There is CDR discloses that the conversation took place in between the co-accused and applicant after and before the commission of offence. I come to the conclusion that said observations are not helpful to the applicant.

19) I have gone through the rulings **2020 CLU 637 Prabhakar Tewari Vs. State of U.P.** wherein it is observed that though criminal cases are pending, the applicant is entitled for bail. In the present facts and circumstances, the MCOCA Act is invoked. I come to the conclusion that the said observations are not helpful to the applicant.

20) I have gone through the rulings **2015 (1) B Cr C 450 Lakhya @ Nikhil Prakash Kshirsagar Vs. The State of Maharashtra, 1995 (2) B. Cr. C. 144 Anil @ Babu Balasaheb Marne Vs. State of Maharashtra**, relied by the advocate for applicant, wherein it is observed that the injured is discharged. The offence punishable under section 307 of IPC, the applicant is entitled for bail. In the present facts and circumstances, the MCOCA Act is invoked. I come to the conclusion that the said observations are not helpful to the applicant.

21) I have gone through the ruling **2021 ALL MR (Cri) 3857 Rakesh Babu Chalwadi Vs. The State of Maharashtra**, relied by the advocate for applicant, wherein it is observed that the applicant has no commonality in any of offences to credit of gang leader. Applicant is not associated with gang leader or any other members

of alleged crime syndicate in any of offences and on this ground the accused was released on bail. The present facts and circumstances are different. I come to the conclusion that the said observations are not helpful to the applicant.

22) I have gone through the observations of the **Hon'ble Bombay High Court in Bail Application no.1454/2019 Sambhaji s/o. Pandurang Sathe Vs. The State of Maharashtra decided on 20/12/2019**, relied by the advocate for the applicant, wherein it is observed that the accused is behind the bar over 5 and half years. The applicant has not committed organized crime nor has he been involved in the offence of robbery and / or murder of the co-driver of truck. The accused was released on bail. The present facts and circumstances are different. I come to the conclusion that the said observations are not helpful to the applicant.

23) Taking into consideration the facts and circumstances and above discussions, I come to the conclusion that the applicant has failed to made out the case to allow the application. Thus, point under consideration answered accordingly and I pass following order.

ORDER

Application is rejected.

Pune
Date : 16/12/2022

(S.B. Salunkhe.)
Addl. Sessions Judge and
Spl. Judge, under MCOC Act,
Pune.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word for word as per original Judgment.

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| Name of Steno | : S. Y. Shaikh, (Steno Grade I) |
| Court name | : Shri. Shrikant B. Salunkhe, Addl. Sessions Judge, Spl. Judge, under MCOC Act, Pune. |
| Date | : 16/12/2022 |
| Order signed by presiding officer on | : 17/12/2022 |
| Order uploaded on | : 17/12/2022 |