<u>ORDER BELOW EXH. 4 IN SPECIAL CASE NO. 121 OF 2023</u>
<u>No. 121 of 2023</u>
CNR No.MHST-01-001835-2023

The State of Maharashtra
Vs.
Amar Ganesh Pawar

By this application, Applicant/accused No.3 Amar Ganesh Pawar is seeking regular bail u/s. 439 of Cr.P.C. in C.R.No. 75/2023 registered with Satara Taluka Police Station for an offence P/u/s. 395, 397, 363, 323, 452, 109, 364, 365, 420, 504, 506, 354 & 120(B) of Indian Penal Code, Sec. 39 & 45 of Maharashtra Money Lending Act, 2014, Sec. 76 of Chit Fund Act, 1982 and Sec. 3(1)(ii), 3(2), 3(4) of Maharashtra Control Of Organized Crimes Act, 1999 (MCOCA).

2] This is successive second bail application filed by the applicant/accused. His previous bail application bearing Crim.Bail Appln. No. 152/2023 was rejected by this Court 06.06.2023 on the ground that investigation is still in progress and the charge-sheet is yet to be filed.

3] Informant Arun Ramchandra Mane has lodged report against accused (1) Samir Salim Shaikh @ Kachhi, (2) Sahil Shaikh, (3) Akshay Talekar, (4) Vrushabh Raut and the present applicant/accused. He has narrated certain instances of his exploitation by the above said accused persons and violence used by them against him.

4] According to the Informant, in year 2012 he was in need of money for purchasing centering material for his business. He came to know that accused Samir Salim Shaikh @ Kachhi, R/o. Satara used to lend money on interest of 10 % p.a. to the needy people. The complainant also came to know that Samir Salim Shaikh @ Kachhi is indulged in illegal gambling business. Accordingly, he met accused Samir Salim Shaikh @ Kachhi. He agreed to facilitate loan of Rs.5,00,000/- on condition that complainant shall work for him as 'Mataka Agent' on payment of Rs.500/- per day (Rs.15,000/- per month). He also warned the complainant that he maintain gang of 10 to 20 boys for recovery of the hand loan. The complainant then started working as 'Mataka Agent' as per the direction of accused Samir Salim Shaikh @ Kachhi. He has worked with him from 2012 to 2016. During this period, accused Samir Salim Shaikh @ Kachhi did not pay any remuneration to him for the work done by him. When the Informant requested accused Sameer Kachhi that his remuneration of Rs.7,00,000/- has been adjusted in the loan amount and he should be relieved from the work, but accused Sameer was not satisfied and said that the Informant is just paying the interest amount and the principal loan amount is still balance against him, therefore he should continue to work with him as 'Mataka Agent'.

5] In 2017, the Informant decided to start his original business of centering. He, therefore availed loan of Rs.7,00,000/- from one Credit Co-operative Society and went with his wife to the residence of Sameer Salim Shaikh @ Kachhi and paid Rs.5,00,000/-. However, accused was not satisfied and told that loan amount is still balance and complainant should work with him for his lifetime.

6] In 2018, accused Sameer Salim Shaikh @ Kachhi, co-accused Akshay Talekar and Rahul Nimbalkar came to the house of complainant and threatened to kill him, if he failed to pay the money with interest. Informant was, therefore compelled to work as Mataka Agent for accused Sameer Kachhi till July 2022 under the threat, fear and coercion.

7] It is alleged that in September 2022 around 8.00 p.m., accused Sahil Shaikh @ Bhaiyya, accused Akshay Talekar & the present applicant/accused came to his residence and beaten-up him. Accused Akshay Talekar and the present accused threatened that no one is still born, who would dare to swallow the money of their gang. They will not leave him. Accused Sahil Shaikh assaulted the Informant. When the complainant's son tried to rescue him, accused beaten-up him. They abducted the complainant's son and later on released him at 11.00 p.m.

8] It is further alleged that on 18/02/2023, when the Informant along with his wife and 2 sons were sitting at their residence, aforesaid accused with accused Vrushabh Raut came and assaulted him and snatched Rs.10,000/- from him. Fed-up by the repeated harassment at the hands of accused Samir Kachhi and his gang, the Informant lodged report against them at Satara Taluka Police Station and accordingly C.R.No.75/2023 came to be registered against them for an offence P/u/ss. 395, 397, 363, 323, 452, 504 &

506 of Indian Penal Code, Sec. 39 & 45 of Maharashtra Money Lending Act, 2014.

9] Few minutes before registration of the present crime, C.R. No.74/2023 came to be registered with Satara Taluka Police Station against some other accused including present accused for an offence P/u/s. 4 & 5 of The Maharashtra Prevention of Gambling Act.

10] It is the case of prosecution that the present applicant/accused is the member of organized crime syndicate run by main accused Sameer Kachhi, who accept the bets on Mataka in illegal Mataka market like, Rajdhani, Kalyan, Main Bazar, Night Milan, Mumbai, Day Milan etc. He used to transfer the money received through Mataka to one Manoj Sakala, if he anticipated that he would unable to repay in the event that number on which he accepted the highest number of bets, declared as winning number. It is the case of prosecution that accused Sameer Kachhi is doing illegal Mataka business through the present applicant and other agents.

11] During the further investigation, Investigating Agency invoked the provisions of MCOC Act and included offence u/s. 3(1)(ii), 3(2), 3(4) of MCOC Act.

12] The Investigating Officer has also included Sec.76 of Chit Funds Act. During the course of investigation, Approval u/s. 23(1)(a) of MCOCA, 1999 has been sought from Special Director General of Police, Kolhapur vide its communication dt. 05/03/2023 against some of the accused including the present accused. However, sanction u/s. 23(2) of the MCOC Act was approved only against 7 accused persons.

13] The previous bail application filed by the accused was rejected before filing the charge-sheet on the ground that there appears money transaction between the main accused Sameer Kachhi and the present accused and 3 criminal cases are pending against him. It was further observed that investigation is in progress and charge-sheet is not filed.

14] Learned Advocate for the applicant submit that by no stretch of imagination, the accused can be roped with other accused for an offence P/u/s. 3 & 4 of MCOCA. He submit that present applicant is not accused in C.R. No.74/2023 which is the base for registration of the present crime.

15] Per contra, learned APP submit that the investigation shows that the present applicant is working in gambling Den run by accused Sameer Kachhi and accused No.1 Sameer Kachhi has transferred Rs.8,95,000/- in the account of the present accused.

16] The wife of complainant resisted the bail application by filing say (Exh.6). It is contended that there is threat to her life as well as to the life of her family members at the hands of applicant and other accused, if they are released on bail.

17] It is to be noted that except bank transaction of the present accused, no other material is available on record to show that he is associated with accused Sameer Kachhi. Merely because, accused's mobile number was found in the mobile handset of some other accused, that itself is not a ground to draw an adverse inference against the present accused in absence of retrieval of chats. In this regard, help can be taken of the case of ***Kishorekumar Agrawal @ Guptaji Vs. National NIA & another, 2023 ALL MR (Cri.) 937*.**

While deciding the bail application in ***Roshan Govind Dayare Vs. State of Maharashtra, AIR Online 2021 Bom. 2569*,** in connection with offence u/s. 395, 397, 347, 412 r/w. Sec. 120-B of IPC, Sec.4/25 of Arms Act and Sec. 3(1)(ii), 3(2) & 3(4) of MCOCA, Hon'ble High Court has observed that even if CDR showing some connectivity between two accused persons, that cannot itself construed to be incriminating and merely because one accused was in touch with other members, that itself would not conclusively established that he took part in committing robbery.

18] According to Ld.Advocate for accused, unless all the ingredients to constitute the offence P/u/s. MCOCA are available, it will not be permissible to invoke the provisions of MCOCA and if the wider meaning is given, the MCOCA can be invoked even for sundry offence.

In ***Ranjit Singh Sharma Vs. State of Maharashtra, 2005(5) SCC 294*,** it was observed that any communication or association which has no nexus with the commission of organized crime would not come within the purview of abetment of offence. It has been further observed that mens-rea is necessary ingredients for commission of crime under MCOCA and the expression “unlawful activity” covered under the definition of Sec. 2(d) must refer to any such act which has direct nexus with the commission of crime.

19] By virtue of Sec. 2(1)(d) r/w. 2 (1)(e) and 2(1)(f) of MCOCA, to invoke its provision, a minimum two charge-sheets will have required to be filed with allegations, (i) violence; and (ii) the object of being gaining pecuniary benefits or other similar benefits.

20] Learned Advocate for the accused reiterated that to invoke the provisions of MCOC Act, at least two parameters prescribed u/s. 21(4) of MCOC Act needs to be established, firstly, existence of prima facie evidence showing involvement of the applicant in the offence registered u/s. 3 of MCOCA, secondly, two charge-sheets must have been filed against the accused persons. There is yet another criteria to be looked into that whether there is material available on record giving rise to a possibility of the applicant indulging in an offence under MCOCA in a reasonable manner. The reliance is placed on the case of ***Dinesh Bhondulal Baisware Vs. State of Maharashtra, 2016 CJ Bom. 834***.

21] Hon'ble Apex Court in case of ***Mohammad Iliyas Mohammad Bilal Kapadia Vs. The State of Gujarat, 2022 LiveLaw (SC) 538*** laid down that following conditions have to be fulfilled for invoking the provisions of the GCTOC Act.

(i) that such an activity should be prohibited by law for the time being in force;

(ii) that such an activity is a cognizable offence punishable with imprisonment of three years or more;

(iii) That such an activity is undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.

22] It is therefore clear that there must be more than one charge-sheet against two members of the syndicate in preceding 10 years.

23] In so far as the criminal antecedents of the present applicant is concerned, other three crimes are registered against him and in C.R. No.74/2023 and C.R. No.228/2022 he is one of the accused alongwith Samir Salim Shaikh @ Kachhi and accused Sahil Shaikh. Learned Advocate for the applicant pointed out that offence vide C.R.No.74/2023 was registered few minutes before the registration of the present crime and this is an offence u/s. 4 & 5 of the Maharashtra Prevention of Gambling Act.

24] It is true that the present accused is co-accused with accused Samir Salim Shaikh @ Kachhi and accused Sahil Shaikh in C.R. No.228/2022 registered with Bhuinj P.S. for an offence P/u/ss. 307 & 367 of IPC and the charge-sheet has been filed against the accused persons. It was submitted by learned Advocate Shri.Deshmukh for applicant/accused that in order to attract the provisions u/s. 3 & 4 of MCOCA, there should be nexus/connectivity between previous and subsequent offence. Such type of material is lacking in the present case. It would submit that requirement of one or more charge-sheet is necessary to attract the provisions of MCOCA. The reliance is placed on the case of ***State of Maharashtra Vs. Jagan Gagansingh Nepali @ Jagya and another, 2011 SCC OnLine Bom 1049,*** wherein the Hon'ble Apex Court have discussed in detail which factors are necessary to be considered to constitute the offence of organized crime.

In the supra case, the Hon'ble Apex Court has explained and discussed the cases and instances, whether MCOCA has to be invoked or not. It was held that it will be safe to presume that the expression, "any unlawful means" must refer to any such act which has a direct nexus with the commission of crime with MCOCA. Unless there is prima facie material to establish that there is organized crime syndicate and that organized crime has been committed by any member of the organized crime syndicate or any person on behalf of such syndicate, the provisions of MCOCA cannot be attracted.

25] A perusal of charge-sheet of C.R. No.228/2022 shows that although the present accused is arraigned with main accused Samir Salim Shaikh @ Kachhi and accused Sahil Shaikh, but it seems that the present crime has no nexus with the aforesaid crime. In C.R. No. 228/2022, the accusations were such that the informant fell in love with Ayesha Shaikh. He sent messages to her on Snap Chat and on this count he was allegedly assaulted by the accused persons.

26] Learned Advocate for the accused submit that for the sake of moment, if the involvement of accused is accepted in the aforesaid crime, there is absolutely no nexus between two crimes. In ***Mukesh & others Vs. Superintendent of Police, Gondia & others, MANU/MH/1149/2021,*** it has been observed by Hon'ble High Court Bombay that to invoke provisions of MCOCA, there must be collective participation of more than accused and there must be proximity between the offences against the member of organization. If there are individualistic cases having no nexus with each other, the provision of MCOCA cannot be attracted.

27] Adverting to the facts of the present case, the indictment against the present accused is that in September 2022 and on 18/02/2023, he alongwith the other accused to the house of the informant and beaten-up him and extended threat. There was no prompt report by the informant after the alleged incident of

September 2022. Learned Advocate for the applicant submit that alleged incident dated 18/02/2023 has been shown in FIR just to cover the delay.

28] Learned Advocate for the applicant/accused submit that co-accused Vipul Jadhav has been released on bail against whom more serious allegations are made by the informant. It is submitted that the case of present applicant stands on lower pedestal than the case of other accused. Moreover, there is long delay in lodging FIR. The complaint is not trustworthy.

29] No doubt, Sections 21(4) and 21(5) of The Maharashtra Control of Organised Crime Act, 1999 creates a bar to release accused under certain circumstances. Sec.21(4) of the Act speaks that if on contesting the bail application by Public Prosecutor, the Court is satisfied that there are reasonable grounds for or believing that the accused is not guilty of offence and he is not likely to commit any offence while on bail. In this connection, in a **Bail Application No. 995 of 2021 Ajit Bhagwan Tiwade Vs. State of Maharashtra decided on 19.01.2020**, Hon'ble Bombay High Court observed that Section 21(4) of MCOC Act must be construed reasonably this section does not lead to conclusion that Court must arrived at the positive finding that applicant for bail has not committed the offence under the Act and the offence in future must be offence under the Act and not any other offence. The twin conditions are required to be satisfied before a person accused of an offence punishable under MCOC Act, 1999, is released on bail. Firstly, the Court should have form an opinion that accused is not guilty of the offence. Second, the Court should be satisfied that the accused would not commit identical offence, if released on bail. In my consideration, the aforesaid authorities relied upon by accused at least help him for grant of bail.

30] One another allegation against the accused is that accused No.1 Sameer Kachhi has transferred Rs.8,95,000/- in the account of the present accused. Learned Advocate for the accused submit that no such amount is received in the account of the present accused. Ld.APP plainly admitted that bank statement of the account of the present accused is not produced on record.

31] In my considered opinion, these are the material change in circumstances brought on record by the accused after filing the charge-sheet. In so far as the present crime is concerned, there is long unexplained delay. Prima facie, the case put forth by the informant appears to be full of inconsistencies and improvements. According to him, he took handloan in the year 2012, but the report is lodged in 2023. It is submitted on behalf of the accused that the other incidents referred by the informant in FIR are afterthought and just made to cover the long delay. Therefore, considering the nature of accusations surfaced in the charge-sheet, I am of considered view that the embargo u/s. 21(4) & 21(5) of the MCOC Act does not create legal hindrance to the bail of the present accused especially when some of the co-accused against whom the same role was assigned were released on bail. If the embargo u/s. 21(4) of the MCOC Act is removed, then there find no reason to refuse the bail to the accused. Hence, the following order.

ORDER

1.	Application is allowed.
2.	Accused Amar Ganesh Pawar be released on his executing Personal Bond of Rs.25,000/- (Rs.Twenty Five Thousand) with one surety of like amount in connection with C.R.No. 75/2023 of Satara Taluka Police Station, Satara.

(A. S. Jadhav)
Special Judge under (MCOCA),
Satara.

Place : Satara.
Date : 09/10/2023