

**ORDER BELOW EXH.03**

1. The Advocate of accused No.07 Aslam Khan alias Mari Akbar Khan has filed bail application under section 439 read with section 437 of the Code of Criminal Procedure, 1973 in C.R.No.590/2022 registered at Yavatmal City Police Station, Dist.Yavatmal for offence punishable under section 143, 147, 148, 149, 307, 384, 506 of Indian Penal Code, 1860, section 3, 25, 27, 35 of the Arms Act, 1959, section 135 of the Maharashtra Police Act, 1951, section 3(a)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999. Say of Learned APP and I.O. was called for. Learned APP and I.O. filed say at Exh.10 and Exh.11 respectively resisting the application.

2. Heard Advocate Shri S.M.Ali for accused No.07 and Learned APP Shri A.S.Verma for State. It is the contention of Advocate of accused No.07 that the accused No.07 himself surrendered before C.J.M. Yavatmal due to the fear of police. The police has not seized any incriminating article from his possession. During police custody police has given ill-treatment to the accused No.07 and he made complaint of ill-treatment by police before this Court. Police has filed chargesheet. The accused had moved Cri.Bail Appln. No. 465/2022 before MCOCA provisions were invoked by police but said bail application was rejected on 14/11/2022 on the ground that investigation was in progress. The name of accused No.07 is not mentioned in the FIR. The accused is in jail since more than 8 months. There is no material on record to show that the present accused is member of organized gang or that he committed organized crime and he is continuing unlawful activity. Except C.R.No.584/2017 registered at Avadhootwadi Police Station for offence punishable under section 392, 307, 379, 294, 143, 147, 148, 149, 452, 201 and 506 of the Indian Penal Code, 1860, section 4/25 of

the Arms Act, 1959 no other offence is registered against the accused. He prayed for grant of bail to accused No.07.

3. It is the contention of Learned A.P.P. that the accused No.01 to 08 under the criminal conspiracy formed organized crime syndicate, committed organized crime and continued unlawful activities in the Yavatmal district. There are many offences registered against the member of the syndicate acting either singly or collectively for and on behalf of Gang. The provision of MCOCA were applied to the crime on 30/11/2022 after receipt of permission and sanction. Suresh Mohanlal Jaiswal is the owner of the M.P. Jaiswal Wine Bar shop. The informant is his nephew. He goes to the Wine Bar to see the accounts. On 04/09/2022 at about 10:30 p.m. when the informant went to the accused for demanding bill of Rs.6,000/- in his Bar, all accused raised dispute, accused No.02 Rohit Jadhav said- 'तु आम्हाला पैसे का मागतो आता तुला जिवाने मारुन टाकतो, दर महिण्याला ५,०००/- रुपये द्यावे लागेल, नही तो तेरे को जान से मार डालेंगे'. The assault was made with knife, stick, glasses and pistol. The weapons stick, country pistol alongwith 3 live cartridges came to be seized. The CCTV footage seized shows the commission of the offence by the accused. That the extortion money was demanded by the accused, therefore, organized crime was committed by the accused. If the accused is released on bail he might pressurize the informant and other witnesses, he might tamper with the prosecution and witnesses. He has prayed for rejection of application.

4. Perused record. On 03/09/2022 accused No.01 Sheikh Alim alias Kavtya Sheikh Kalim, accused No.02 Rohit Jadhav, accused No.03 Nayan Soudagar, accused No.04 Adesh Khairkar, accused No.05 Sheikh Imran alias Kangaroo, accused No.06 Naim Khan alias Naim Tamatar and accused No.08 Sajij alias Rijju Sayani was sitting in the M.P. Jaiswal Wine

Bar of the complainant. The manager Shaym Narayan Dhamndev told him that the accused used to drink alcohol, create ruckus in the Bar and not pay the bill amount. The complainant demanded the bill amount to the accused. All the accused quarreled with the complainant and said that 'तु बिल के पैसे कैसे मांग रहा' and accused No.03 Nayan Soudagar assaulted the complainant by slapping below his ear and they threatened to kill him. Accused No.03 Nayan Soudagar and accused No.05 Sheikh Imran assaulted the complainant by knife on his nose and face, accused No.04 Adesh Khairkar assaulted the complainant by stick and accused No.06 Naim Khan and accused No.08 Sajid Sayani assaulted the complainant by throwing glass on his head. They sabotaged the Bar. Accused No.01 Sheikh Alim alias Kavtya Sheikh Kalim fired Pistol in air. Accused No.01 Sheikh Alim alias Kavtya Sheikh Kalim and accused No.02 Rohit Jadhav asked him to pay Rs.5,000/- per month towards protection money, otherwise they will kill him. The investigation was done by the Local Crime Branch and it was found during investigation that accused No.01 to No.08 are members of gang. The provisions of MCOCA were added.

5. As per section 21(5) of the Maharashtra Control of Organized Crime Act, 1999- Notwithstanding anything contained in the Court, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question. It is not the contention of the Learned APP that accused No.07 was on bail in any case registered under the provisions of MCOCA when this offence was committed. Thus, there is no bar of section 21(5) of the Maharashtra Control of Organized Crime Act, 1999. The Learned APP has filed pursis that the confessional statement under section 18 of the MCOCA of accused No.07 recorded by the C.J.M. Amravati is

not yet received. The Advocate of the accused No.07 has filed pursis that the report of Learned C.J.M., Yavatmal about complaint of ill-treatment at the hands of police of the accused No.07 and accused No.08 is awaited. No order passed by Learned C.J.M. Yavatmal in respect of complaint of ill-treatment is received by this Court till today.

6. To release any accused on bail, as per section 21(4)(b) of the Maharashtra Control of Organized Crime Act, 1999 the Court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If these two conditions are fulfilled then only bail can be granted for offence under MCOCA.

7. Firstly, it has to be seen whether the accused No.07 is a part of 'organized crime syndicate' as defined under section 2(1)(f) of MCOCA. Upon perusal of the crime register extract, it is seen that in C.R.No. 584/2017 is registered at Avadhootwadi Police Station for offence punishable under section 392, 307, 379, 294, 143, 147, 148, 149, 452, 201 and 506 of the Indian Penal Code, 1860, section 4/25 of the Arms Act, 1959. The Learned APP has not shown any similarity between the pending case and the present offence. The Learned APP has not shown any nexus between the past crime and present case.

8. Secondly, it has to be seen whether the offence committed falls under the definition of 'organized crime' as defined under section 2(1)(e) of MCOCA. In the present case, the complainant asked the accused to pay the bill for the liquor drank by them. This lead to the dispute and consequent assault. It is crystal clear that the incident had happened on the spur of the moment and there was not pre mediation. It is alleged that the accused No.01 Sheikh Alim alias Kavtya Sheikh Kalim and accused No.02 Rohit Jadhav demanded the

amount of Rs.5,000/- as protection money. The protection amount was demanded after the dispute for payment of bill arose. Said extortion can not be held to be pecuniary gain as contemplated under 'organized crime'. It is simpliciter extortion.

9. Thirdly, it has to be seen whether the accused No.07 has committed continuing unlawful activity as defined under section 2(1)(d) of MCOCA. The only offence registered against accused No.07 is C.R.No.584/2017 registered at Avadhootwadi Police Station for offence punishable under section 392, 307, 379, 294, 143, 147, 148, 149, 452, 201 and 506 of the Indian Penal Code, 1860, section 4/25 of the Arms Act, 1959. The Learned APP has not shown any nexus between the past offence and the present offence. The Learned APP has not shown any similarity between the modus operandi of the two offences. The accused No.07 is not convicted of any offence so far.

10. For the aforesaid reasoning, it is not established prima facie by the prosecution that the accused No.07 is a member of organized crime syndicate and he committed organized crime with the objective of gaining pecuniary benefit and he continued indulging in unlawful activities. Prima facie provisions of MCOCA are not attracted. There are reasonable grounds for believing that the accused No.07 is not guilty of such offence and that he is not likely to commit any offence while on bail.

11. Learned APP has relied upon *Cri. Application No. 1525 of 2018 Sunil Dnyandeo Lahare Vs State of Maharashtra Hon'ble Bombay High Court, Bench at Aurangabad* wherein it was held that requirement of one or more chargesheet is qua the unlawful activities of the organized crime syndicate. In the present matter, the offence was committed as

member of organized crime syndicate is not proved. Further, there is no nexus or similarity between the pending chargesheet and present crime. There is no similarity in the modus operandi of the previous crime and present crime. As fact of the two cases are different above ratio is not applicable.

12. Advocate of the accused has relied upon *Bail Application No.2241/2018 Shri Girish Kumaran Nayar Vs. State of Maharashtra Hon'ble High Court, Bombay* wherein it was held that criminal antecedent of the applicant were placed on record. However, which chargesheet were considered for his prosecution under MCOCA was not clear. Nexus between past criminal activities and present crime is also not established. Nothing to show that past offences were committed by applicant as member of or on behalf of organized crime syndicate. Mere proof of past chargesheet is not enough. Investigation is already over. The applicant is in custody since last 4 years. Trial not likely to commence within reasonable time. Bail was granted. In the present case, the prosecution has not shown that C.R.No.584/2017 was committed by the applicant as member of or on behalf organized crime syndicate. Accused is behind bars since 8 months. *Muddemal* is not deposited by the prosecution yet due to which charge is not yet framed. The trial is likely to take long to commence. As the fact of two cases are similar the above ratio is applicable.

13. The role attributed to the accused No.07 is seen from the CCTV footage panchanama. At 9:49:41 p.m. accused No.07 is seen to be breaking glasses and other articles in the Bar by a big wooden stick. Apart from the above scene there is no other role attributed to the accused No.07. CCTV footage prima facie clearly shows the presence of the accused No.07 at the spot of incident and complicity in the commission of the offence. The

wooden stick is already seized. To protect the complainant and witnesses certain terms and conditions can be imposed on the accused. For the aforesaid reasoning, it is held that prima facie the provisions of MCOCA are not attracted but only the provisions of Indian Penal Code, 1860 and other Acts are attracted. Accordingly, the accused No.07 is entitled to be released on bail. Hence, the order-

ORDER

1. The criminal bail application is allowed.
2. The accused No.07 Aslam Khan alias Mari Akbar Khan be released on bail on his P.R. bond of Rs.50,000/- with one solvent surety in like amount on the following conditions-
 - (i) He shall not enter into the territorial jurisdiction of entire Yavatmal District, (except for attending Court proceedings), for a period of one year from the date of his actual release.
 - (ii) He shall furnish his cell number and intended address of his residence to the concerned investigating officer.
 - (iii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case, and also shall not tamper with the prosecution evidence.

Date : 19/06/2023
Place : Yavatmal

(Dr. Gauri Kawdikar)
Additional Sessions Judge,
Yavatmal