

Sunil Ashok Kondugale vs The State Of Maharashtra on 18 April, 2024

Author: Madhav J. Jamdar

Bench: Madhav J. Jamdar

2024:BHC-AS:19927

518-BA-68

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 680 OF 2023

Sunil Ashok Kondugale

Age: 25 years;
Occupation: Service;
R/at: Maratha Chowk,
Jawahar Nagar, Ichalkarnji,
Taluka: Hatkanangale,
District: Kolhapur.
(Presently lodged at
Kolhapur Central Prison)

Versus

The State of Maharashtra

(At the instance of Shivaji
Nagar Police Station,
Kolhapur)

Mr. Ganesh K. Gole i/b Mr. Ateet Shirodkar, Advocates for Applicant.
Mr. Pandurang H. Gaikwad, APP, for Respondent-State.

CORAM: MADHAV J. JAMDAR, J.
DATED: 18th APRIL 2024

ORAL JUDGMENT:

1. I have extensively heard submissions of Mr. Gole, learned Counsel for the Applicant and Mr. Gaikwad, learned APP for the Respondent- State.

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2. This regular Bail Application is preferred under Section 439 of the Code of Criminal Procedure, 1973 ("CrPC"). The relevant details are as follows:

2 Date of incident 07/11/2021 3 Date of Registration of F.I.R. 10/11/2021 4 Name of Police Station Shivaji Nagar, District-Kolhapur 5 Sections invoked in F.I.R. 306, 386, 395, 504 & 506 of the I.P.C., 1860;

6 Date of arrest	10/11/2021
7 Date of filing of Charge-sheet	06/05/2022
8 Sections applied in Charge-sheet	306, 386, 395, 504 & 506 of the I.P.C., 1860; 3(1)(ii), 3(2) & 3(4) of the MCOC Act, 1999.

3. The prosecution case in brief is as follows:

(i) The deceased-Aditya Mahadwar, was in a disturbed psychological state for about two months prior to the incident i.e. since about September 2021 and there was a drastic change in his behavior.

His mother noticed that he was under tremendous pressure.

(ii) In view of the said situation, the informant i.e. the mother asked the deceased about the change in his behavior and the reason why he was under tremendous pressure. The deceased informed his mother that the accused persons belonging to 'german Gang' were demanding an extortion amount of Rs.1,00,000/- to pay the professional fees of an Advocate so that the Advocate would file a bail Application and initiate proceedings to secure bail for the Applicant's brother who had been arrested in an offence inter alia registered under the Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act").

(iii) As the accused persons, including the Applicant, were pressurising the deceased for the extortion amount, one Akash Kadam - friend of the deceased, advised the deceased to pay some money to the Accused so that the Accused would stop threatening.

(iv) As per the prosecution case, the Applicant is a member of the 'German Gang' and Accused No.1-Abhishek Tarane is its gang leader. The deceased paid Rs.25,000/- to the accused persons. However, the accused were not satisfied with the said amount and they caught hold of the deceased and snatched his gold ornaments and further demanded an additional Rs.25,000/-. As per the prosecution case, the deceased could no longer tolerate this pressure and he eventually died by

suicide.

(v) In the F.I.R. name of the present Applicant is specifically mentioned as member of said 'german gang'. His name is specifically mentioned in the statement of witnesses and main role is attributed to the Applicant. The deceased had left a suicide note where also Applicant's name is specifically mentioned.

4. Mr. Gole, learned Counsel for the Applicant raised the following contentions in his submissions:

(i) Accused No.3-Aniket Subhash Badave has been released on 518-BA-680-2023-F (J).doc bail by the learned Additional Sessions Judge, Ichalkaranji vide Order dated 10th August 2022 passed in Spl. (MCOCA) Case No. 26/22 (Exh.4) by observing that this is the only offence and Charge-sheet registered against the said Accused and hence there is no 'continuing unlawful activity' within the meaning of Section 2(d) of the MCOC Act.

Hence, as no offence was made out under the MCOC Act, the learned Sessions Judge granted bail to the co-Accused.

(ii) As far as the Bail Application of the present Applicant is concerned, it was rejected on the ground that there is an other C.R. registered against the present Applicant in his individual capacity.

(iii) The Applicant is not a member of an organised crime syndicate. There is no nexus brought on record by the prosecution, to show that the Applicant was involved with the other co-Accused in any other offence. The other case being C.R. No.403 of 2017 registered against the Applicant is in his individual capacity. There is no material on record to show that the Applicant is connected with the members of the organised crime syndicate. Therefore, as far as the present offence is concerned, provisions of the MCOC Act cannot be invoked against the Applicant.

(iv) There is no recovery of any amount or gold ring from the Applicant or at the instance of the Applicant, as alleged in the Charge- sheet.

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(v) Mr. Gole, learned Counsel relied on the decision of a Division Bench of this Court in Govind Sakharam Ubhe v. State of Maharashtra 1. He submitted that the decision of the Supreme Court of India in Zakir Abdul Mirajkar v. State of Maharashtra 2 and the Order dated 24th January 2023 in the case of Vivek Chandrakant Manjarekar v. State of Maharashtra 3 are required to be appreciated and the observations recorded in the said order are required to be read in the back drop of the observations recorded by the Division Bench in Govind Sakharam Ubhe (supra). He submitted that it has been specifically held in Govind Sakharam Ubhe (supra) that it is necessary to establish a link between the members of the organised crime syndicate. If the link is not established against any such person, then that person cannot be roped in. He relied on paragraph no.78 of Zakir Abdul Mirajkar (supra). He also pointed out paragraph nos.5 & 6 of Vivek Chandrakant Manjarekar (supra).

(vi) Mr. Gole, learned Counsel also relied on the Order dated 14 th November 2022 in Shakir Khwaja Peer Sayyed v. State of Maharashtra 4 and more particularly, on paragraph nos.12 & 13 thereof. He submitted that the Applicant has never participated in any unlawful activity by any member, singly or jointly, on behalf of the syndicate and therefore, an individual offence in which he is charged, shall not be considered to be 1 2009 SCC OnLine Bom 770 2 2022 SCC OnLine SC 1092 3 2023:BHC-AS:3507 4 2022:BHC-AS:27683 518-BA-680-2023-F (J).doc sufficient to sustain his conviction under the MCOC Act. He also relied on the decision of a Division Bench of this Court in Maruti Navnath Sonawane v. State of Maharashtra 5 and more particularly on paragraph no.17.3 thereof. Mr. Gole, learned Counsel also relied on the decisions in the case of Dinesh Bhondulal Baisware v. State of Maharashtra 6 and Girish Kumaran Nayar v. State of Maharashtra 7.

(vii) The Applicant in the present case has no nexus with the organised crime syndicate and there is no commission of offence in the past between the members of the organised crime syndicate and the Applicant. An individual crime is not sufficient to rope the Applicant under the MCOC Act.

(viii) On the basis of the above cited decisions, it is the submission of Mr. Gole, learned Counsel for the Applicant that even after the decision of the Supreme Court in Zakir Abdul Mirajkar (supra), various learned Single Judges have passed several bail orders in cases where provisions of the MCOC Act have been invoked by observing that the previous offence registered against the Applicant had no nexus or commonality between the offence filed against the other co-Accused/members of an organised crime syndicate, and in absence of any nexus or commonality or any established link, the said person cannot be roped in under the provisions of the MCOC Act. 5 2022 SCC OnLine Bom 955 6 2016 SCC OnLine Bom 4788 7 2021 SCC OnLine Bom 212 518-BA-680-2023-F (J).doc

5. On the other hand, Mr. Gaikwad, learned APP for the Respondent-State vehemently opposed the Bail Application and raised the following contentions:

(i) He relied on the affidavit of Mr. Sameersinh Dwarkojirao Salve dated 24th August 2023. He submitted that the Applicant is one of the active members of the gang headed by Abhishek Terane. He submitted that the said gang has created a reign of terror within the jurisdiction of Kolhapur district and that the said gang headed by Abhishek Terane has committed various offences and the Charge-sheets have been filed before the respective competent Courts and the respective competent Courts have taken cognizance of the same. He pointed out paragraph nos.10 & 11 of the said affidavit giving particulars of the ten cases registered against the gang leader-Abhishek Terane and the particulars of two cases registered against the Applicant which includes the present offence.

(ii) He submitted that there is prima facie evidence to prove the association of the present Applicant with the organised crime syndicate.

He relied on the statements of various witnesses recorded during the investigation.

(iii) He relied on the decisions of this Court in the cases of Vaibhav alias Sonya Arun Khondge v. State of Maharashtra 8, Govind Sakharan Ubhe (supra), on the decisions of the Supreme Court in the cases of 8 2023:BHC-AS:23414 518-BA-680-2023-F (J).doc Prasad Shrikant Purohit v. State of Maharashtra 9, Kavitha Lankesh v. State of Karnataka 10, Abhishek v. State of Maharashtra 11 and Vivek Chandrakant Manjrekar (supra).

(iv) He submitted that as per the settled law, if within a period of preceding ten years, one Charge-sheet has been filed in respect of organised crime committed by the members of a particular crime syndicate, the said Charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOC Act against him even if he is involved in one case. He submitted that if these requirements are fulfilled then the membership of an organised crime syndicate of the said accused will be a part of the continuing unlawful activity of the organised crime syndicate. He submitted that what is important is the nexus or the link of the person with the organised crime syndicate. He submitted that the position on record clearly shows that this link is completely established. He, therefore, submitted that the Bail Application be rejected.

6. In view of the submissions advanced by both the sides, the following points fell for consideration:

(i) Whether the Applicant does not have any nexus with the organised crime syndicate and therefore provisions of the MCOC Act can not be applied against the Applicant?

9 (2015) 7 SCC 440 10 (2022) 12 SCC 753 11 AIR 2022 SC 2488 518-BA-680-2023-F (J).doc

(ii) Whether the satisfaction can be recorded in favour of the Applicant with respect to twin conditions as envisaged in Section 21(4) of the MCOC Act?

(iii) Whether parity is applicable to the Applicant in terms of order granting bail to the Accused No.3 by Order dated 10th August 2022 passed by the learned Additional Sessions Judge, Ichalkaranji?

7. FIRST POINT:

Whether the Applicant does not have any nexus with the organised crime syndicate and therefore provisions of the MCOC Act can not be applied against the Applicant?

The main contention raised by Mr. Gole, learned Counsel for the Applicant is that the Applicant is not a member of an organised crime syndicate and that there is no nexus brought on record by the prosecution to show that the Applicant was involved with the co-

Accused in any other offence. He submitted that in an other case registered against the Applicant in connection with C.R. No.403 of 2017, the Applicant is the sole Accused therein and that the said case does not have any other co-Accused. Therefore there is no material on record to show that the Applicant is connected with the

members of the organised crime syndicate. To substantiate these contentions, he relied on various decisions to which reference is already made. The contentions raised by the learned APP in this behalf are already set out 518-BA-680-2023-F (J).doc in an earlier part of this Judgment.

8. Before considering the rival contentions, it is necessary to set out certain provisions of the MCOC Act.

(i) Section 2(1)(d) defines 'continuing unlawful activity' as follows:

"(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;"

(ii) Section 2(1)(f) defines 'organised crime syndicate' as follows:

"(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;"

(iii) Section 2(1)(e) defines 'organised crime' as follows:

"(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;"

(Emphasis added)

9. In Govind Sakharam Ubhe (supra) the above provisions of the MCOC Act are extensively considered. The relevant discussion is to be 518-BA-680-2023-F (J).doc found in paragraphs 34 to 37, which read as under:

"34. Therefore, the MCOCA contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That is, they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law.

35. It is now necessary to go to the definition of 'continuing unlawful activity'. Section 2(1)(d) defines 'continuing unlawful activity' to mean 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 organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent court within the preceding ten years and that court have taken cognizance of such offence. Thus, for an activity to be a 'continuing unlawful activity' -

- 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.

36. 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'.

37. But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines 'continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in 518-BA-680-2023-F (J).doc different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs. 5 lakhs. The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against

him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. 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."

(Emphasis added)

10. The discussion in paragraph nos.39 and 44 of Govind Sakharan Ubhe (supra) is also relevant. The important part of the same is as under:

"39. ... 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. Stress is on the unlawful activities committed by the organized crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organized crime syndicate. ...

44. ... In the light of this, we are of the opinion that the words 'more than one charge-sheet' contained in Section 2(1)

(d) refer to unlawful activities of the organized crime syndicate. Requirement of more than one charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof. "

(Emphasis added)

11. Thus, what has been held in Govind Sakharan Ubhe (supra) can be summarised as follows:

[I] What is contemplated under Section 2(1)(d) of the MCOC Act 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 an organised crime syndicate and in respect of which more than one charge-sheets have been filed. The emphasis is on the unlawful activities committed by the organised crime syndicate. Requirement of one or more charge-sheet is qua the unlawful activities of the organised crime syndicate.

[II] The words "more than one charge-sheet" contained in Section 2(1)(d) of the MCOC Act refer to unlawful activities of the organised crime syndicate and therefore, requirement of more than one charge-sheet is qua the unlawful activities of the organised crime syndicate and not qua individual member thereof.

[III] What is important is the nexus or the link of the person with the organised crime syndicate. The link with the 'organised crime syndicate' is the crux of the term 'continuing unlawful activity'.

If this link is not established, then that person cannot be roped in under the provisions of the MCOC Act.

12. The Supreme Court in Zakir Abdul Mirajkar (supra) in paragraph No.78 quoted with approval the said paragraph No.37 of Govind Sakharam Ubhe (supra). The Supreme Court in Zakir Abdul Mirajkar (supra) in paragraph No.79 has held that persons who are alleged to be members of an organised crime syndicate need not have more than one Charge-sheet filed against them in an individual capacity. Rather, Charge-sheets with respect to the organised crime syndicate are sufficient to fulfil the condition in Section 2(1)(d) of the MCOC Act.

13. Thus, what is important is the nexus or the link of the person with the organised crime syndicate and it is not necessary that more than one Charge-sheet is required to be filed against every accused person. Thus, at the stage of considering the Bail Application, what is required to be taken into consideration by the Court is the existence of a nexus or the link of the person with the organised crime syndicate and 518-BA-680-2023-F (J).doc the link with the 'organised crime syndicate' is the crux of the term 'continuing unlawful activity'. Requirement of one or more Charge-sheet is qua the unlawful activities of the organised crime syndicate and not qua an individual member.

14. Argument of Mr. Gole, learned Counsel for the Applicant is required to be considered in the light of the above settled law. It is the submission of Mr. Gole, learned Counsel that the C.R. No.403 of 2017 registered against the Applicant which is the other case against him, is in his individual capacity and therefore there is nothing on record to show that the Applicant is the member of an organised crime syndicate. However, perusal of the prosecution case in the present case shows that the Applicant is a part of the gang, which is operating under the name and style as 'german gang' and Accused No.1-Abhishek Tarane is its gang leader. There are a total of 6 accused persons including the present Applicant belonging to the 'german gang'. They were demanding an extortion amount of Rs.1,00,000/- from the deceased. The said extortion amount was demanded by the accused persons to pay the professional fees of an Advocate so that the Advocate would file a bail Application and initiate proceedings to secure bail for the Applicant's brother who had been arrested in an offence inter alia registered under the MCOC Act. As per the prosecution case, as the Accused including the Applicant were pressuring the deceased for the payment of the said 518-BA-680-2023-F (J).doc extortion amount, one Mr. Akash Kadam, a friend of the deceased, asked the deceased to pay some money to the Accused so that the Accused would stop threatening. The deceased paid Rs.25,000/- to the accused persons. The Accused were not satisfied with Rs.25,000/-, and therefore they caught hold of the deceased and snatched gold ornaments from him and they further demanded Rs.25,000/- from him. As per the prosecution case, the deceased could not bear the said pressure and he eventually died by suicide.

15. Thus, what is required to be determined in this case is whether the C.R. No.577 of 2021 i.e. present case is sufficient to establish the nexus or the link of the present Applicant with the

organised crime syndicate operating under the name and style as 'german gang'. The prosecution case clearly shows that there is a nexus or a link between the Applicant and the organised crime syndicate operating in the name and style as 'german gang' of which, the Accused No.1-Abhishek Tarane is the gang leader. In this behalf, it is very important to note the statement of Akash Subhash Kadam recorded under Section 164(5) of the CrPC. The relevant portion of the said statement reads as under:

Beh Jh- vkdk'k lqHkk" k dne] o; 22 o"ksZ] jk- jktnwr gkVWsy jksM] guqeku eanhj 'kstkjh] iksokj pkG] tokgjuxj] bpydjath] rk- gkrd.kaxys] ft- dksYgkiwj ;k}kjs izfrKkiwoZd fuosnu djrks dh] 01- vkfnR; cGoar egk}kj gk ek>k fe= gksrk- lu 2003 iklwu rs lu 2018 Ik;Zar rs vkeP;ktoG jkgk;y gksrs- R;keqGs] vkEgh loZ ckch ,desdkauk lkaxr gksrks- vkEgh jkgr vlysY;k Hkkxkr tEkZu xWaxph ng'kr 518-BA-680-2023-F (J).doc vkgs- x.ks'k mRlokiwohZ lqfuy v'kksd dksaMwxGs ;kus vkfnR;dMs ,d yk[k ;i;kaph [kaM.kh ekxhryh- lqfuy ;kus vkfnR;yk lkafxrys dh] R;kpk HkkÅ eksdk xqUgikkr rq:axkr vkgs- R;kyk tsye/kwu ckgsj dk<.;klkBh dksVZ dpsjh o odhykapk [kpZ dj.;klkBh ,d yk[k ;i;kaph vko';drk vkgs vls lkaxwu R;kP;kdMs ,d yk[k ;i;s ekfxrys o IkSls u fnY;kl rqyk ftoar Bso.kk ukgh] ukghrj xko lksMwu tkos ykxsy v'kh /kedh fnyh- x.ks'k mRlokP;k osGh vkfnR;us R;kyk lqfuy dksaMwxGs ;kus fnysY;k [kaM.khP;k /kedhcker eyk lkafxrys- fnukad 10-09-2021 jksth iaMhr rqyk o vkfnR;yk ekjrhy vls lkafxrys o ukghrj xkMh dk<wu ?ksbZu vls EgVyk- nqU';k fno'kh fnukad 02-11-2021 jksth vfudsr cMos ;kus lqfuy dksaMwxGs ;kP;k Qksuo:u eyk Qksu dsyk o dksBs vkgs vls fopkjys- eh R;kyk lkafxrys dh] ckykth izksls] o[kkj Hkkx ;sFks vLY;kps lkafxrys- rsFks vfudsr cMos vkyk- eh vfudsrk la;/kdkGi;Zarph osG nikk] eh iSls nsrks vls lkafxrys- lqfuy dksaMwxGs ;kus eyk iqUgk Qksu dsyk o lkafxrys dh] ,drj xkMh ikfgts fdaok iSls ikfgtsr- iqUgk rklkHkjkus lqfuy dksaMwxGs o vfudsr cMos ;kus eyk o[kkj Hkkx ;sFks cksyowu ?ksrys o rh xkMh vkfnR;ph vLY;kps letqu ek>h xkMh dz- ,e,p 09 06 10 gh xkMh ?ksÅu xsys- vkfnR; gk xkoh xsyk gksrk- vkfnR;us vkjksih ;kaP;k [kaM.khP;k /kedhyk daVKGwu fnukad 07-11-2021 jksth vkRegR;k dsyh- R;k Hkkxkr teZu xWaxph ng'kr vkgs- R;keqGs] R;kaP;kfo:/n dks.khgh rdzky nsr ukgh- vkfnR;P;k e`R;ql lqfuy dksaMwxGs] jfo Mksaxjs] rstl dkaCkGs] iou ljksns] vfHk"ksd rsj.ks] vfudsr cMos gs teZu xWaxps lnL; tckenkj vkgsr o R;kauh okjaokj /kedh nsÅu o ekjgk.k d:u vkfnR;yk vkRegR;k dj.;kl izo`Rr dsys vkgs-P (Emphasis added) English translation of the same is as under:

"I, Shri Akash Subhash Kadam, age: 22 years, residing at Rajdoot Hotel Road, next to Hanuman Temple, Powar Chawl, Jawahar Nagar, Ichalkaranji, Tal. Hatkanangale, District: Kolhapur, state on Solemn Affirmation as under:

01. Aditya Balwant Mahadwar was my friend. Since the 518-BA-680-2023-F (J).doc year 2003 upto the year 2018, he was residing next to my house and therefore, we used to share everything to each other. There is one gang viz. 'German Gang' and it has spread terror in the area where we are residing. Before Ganpati Festival, Sunil Ashok Kondugale had demanded an amount of Rs. One lakh as extortion money from Aditya. At that time, Sunil had told Aditya that his brother was in jail in the offence

under MCOC Act and that the amount of Rs. One lakh was required to file applications before the Hon'ble Court and to pay fees of the Advocate therefore, for getting him released from jail and by saying this, he demanded Rs. One Lakh from him and further threatened him : "If you don't give monies, I will not keep you alive or else you will have to leave the village". During the Ganesh Festival, Aditya had told me about the threat of extortion given by Sunil Kondugale to him. On the date 10.09.2021, Pandit threatened saying, will kill you and Aditya" and further threatened : "Or else, I will take away your vehicle". On the next day i.e. on the date 02.11.2021, Aniket Badve telephoned me from the phone of Sunil Kondugale and asked me as to where I was. Thereupon, I told him that I was at Balaji Process, Vakhar area. Aniket Badve came there. At that time, I told Aniket that I would give monies and requested him to give me time upto the evening. Thereupon, Sunil Kondugale again telephoned me and said to me : "I want either the vehicle or monies". After about one hour thereafter, Sunil Kondugale and Aniket Badve called me at Vakhar area and assuming that the said vehicle was of Aditya, they took away my vehicle No. MH-09-DL-9610. Aditya had gone to his native place. Thereafter, being fed up 518-BA-680-2023-F (J).doc of the threats of extortion given by the Accused, Aditya committed suicide on the date 07.11.2021. There is a terror of 'German' Gang in the said area and therefore, no body dares to make complaint against them. The 'German' gang members by names Sunil Kondugale, Ravi Dongre, Tejas Kamble, Pawan Sarode, Abhishek Terne, Aniket Badve have become instrumental for the death of Aditya and they, by repeatedly giving threats and by assaulting Aditya, have forced him to commit suicide."

16. It is also significant to note that the deceased, before dying by suicide, left behind a suicide note. The said suicide note, as reflected in the Seizure Panchanama, reads as under:

βika<Ú;k vk[kho dkxnoKj fuGîkk 'kkbZus ejkBh v{kjkr fyfgysyh fpB~Bh R;kr etdwj β!!Jh jke!! fn-07@11@2021 eh vkfnR; cGoar egk}kj eyk feGkysY;k ekuflD =kl /kedh [kaM.kh ;k ekx.kho:u eh vkRegR;k djhr vkgs- eyk teZuh xWaxdMwu ,d yk[kkph [kaM.kh ekxhryh tkr vkgs - ;krhy eksjD;k lqfuy dMksys] vfHkfr rsj.ks] vfudsr cMos] jfo Mksaxjs ;kapsdMwu okjaokj ekj.ksph /kedh nsr vkgsr- v{k; dMksys gk vkepk HkkÅ vkgs- ;kP;k lkgk, ;kus okjaokj /kedh nsowu ekÖ;kdMwu 25 gtkj :i; s o lksU;kph vaxBh dk<wu ?ksryh vkgsr- o ekÖ;k dqVwackyK ekj.;kph /kedh fnyh vkgs- Eg.kwu eh =klkyk daVKGwu vkRegR;k dsyh vkgsP-P (Emphasis added) English translation of the same is as under:

"A note in blue ink, in Marathi written on a white ruled paper, having contents viz. "!!Shree Ram!!, Date - 07.11.2021. I, Aditya Balwant Mahadwar, commit suicide due to mental harassment being caused to me, threats being given to me and extortion money being demanded from me. The 518-BA-680-2023-F (J).doc 'Germany' Gang is demanding Rs.One Lac as extortion money from me. The said Gang's 'Mhorkya' (i.e. Headman) by name Sunil Kadole, Abhijit Terne, Aniket Badve and Ravi Dongre are repeatedly threatening me to kill me. Akshay Kadole is our brother and by aiding and

abeting with him, threats have been given repeatedly and an amount of Rs.25 Thousand and a gold ring have been extorted from me and a threat has been given to kill my family. Being fed up of this harassment, I am committing suicide."

17. It is significant to note that there are about 10 criminal cases pending where the Charge-sheets have been filed against the Accused No.1. The details of the said cases are set out in the Affidavit dated 24 th August 2023 filed by the Deputy Superintendent of Police, Ichalkaranji Division, District-Kolhapur. The details of said cases as set out in paragraph No.10 of the said Affidavit are as under:

Sr. No.	Police Station	Cr. No. & Act	Status
1	Shivajinagar	569/2020, U/secs 307, 34 of IPC, Court Pending U/Secs 4, 25 of Arms Act	
2	Shivajinagar	398/2020, U/secs 4, 25 Arms Act, Court Pending U/sec 51(B) of D. M. Act, U/secs 2, 3, 4 of E. D. Act	
3	Shivajinagar	363/2020 U/secs 379, 34 of IPC	Court Pending
4	Shivajinagar	111/2020 U/secs 324, 504, 506 & 34 of IPC	Court Pending
5	Ichalkaranji	93/2019 U/secs 395, 387 of IPC, Court Pending U/secs 4, 25 of Arms Act, U/secs 37(1) (a), 135 of M. P. Act	
6	Shivajinagar	503/2018 U/secs 4, 25 of Arms Act, U/secs 135 of M. P. Act	Court Pending
7	Shivajinagar	223/2017 U/secs 307, 143, 147, 148, 149 of IPC	Court Pending
8	Shivajinagar	150/2018 U/secs 394, 363, 337, 338, 504, 506, 34 of IPC	Court Pending
9	Shivajinagar	208/2018 U/secs 307, 504, 354, 506 of IPC	Court Pending
10	Shivajinagar	577/2021 under Sections 306, 386, 395, 504, 506 of IPC, and U/secs 3(1) (i), 3(1)(ii), 3(2), 3(4) of MCOC Act	Court Pending

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18. The material on record clearly shows that there is a nexus or a link of the Applicant with an organised crime syndicate operating in the name and style as 'german gang' of which, the Accused No.1-Abhishek Tarane is the gang leader. Thus, there is no substance in the contention of Mr. Gole, learned Counsel for the Applicant that the Applicant has no nexus with the concerned organised

crime syndicate and that therefore the provisions of the MCOC Act cannot be invoked against the Applicant.

19. Mr. Gole, learned Counsel relied on Shakir Khwaja Peer Sayyed (supra). However, in the said case, on the basis of the decisions in Govind Sakharam Ubhe (supra) and Zakir Abdul Mirajkar (supra), it has been held that for the purpose of invoking the provisions of the MCOC Act, what is necessary is the nexus or the link of the person with the organised crime syndicate which has indulged in the continuing unlawful activity and that if this link is not established, then the person cannot be roped in under the MCOC Act. By analysing the facts of the 518-BA-680-2023-F (J).doc said particular case, the learned Single Judge in Shakir Khwaja Peer Sayyed (supra) held that the Applicant in that case had never participated in any unlawful activity committed by any member singly or jointly on behalf of the syndicate and therefore, an individual offence in which the said Applicant is charged, cannot be considered to be sufficient to sustain his conviction under the MCOC Act. Thus, in the factual situation of that case, it was held that there is no link established between the Applicant therein with the concerned organised crime syndicate. Thus, the said case has no relevance to the facts of this case.

20. Reliance is also placed on the decision of a learned Single Judge of this Court in the case of Jinesh Arvind Patel v. State of Maharashtra . In the said case, on the basis of the facts of that case, it has been held that prima facie it does not appear that the Applicant in the said case is a member of the organised crime syndicate. Thus, the said case has no relevance to the facts of this case.

21. Mr. Gole, learned Counsel has relied on Maruti Navnath Sonawane (supra). He more particularly relied on the following portion of paragraph No.17.3 therein, which reads as under:

"17.3 Further it is clear that there is/are no charge- sheet/s filed against the Appellant as a member of the organized crime syndicate headed by Ayub Chikna in respect of any similar activity in the competent courts within the preceding period of ten years. Therefore the Appellant's indictment does not fall within the purview of the definition carved out under Section 2(d) read with 12 2023:BHC-AS:38156 518-BA-680-2023-F (J).doc

(e) of the MCOC Act."

However, one or two sentences of the said Judgment cannot be read in isolation and de hors the facts of that case. In fact, it is required to be noted that in paragraph No.25 of the said decision, it is specifically held as follows:

"25. In our opinion, the material evidence which we have discussed above does not create any suspicion against the Appellant leading us to believe and presume that the Appellant is a member of the organized crime syndicate headed by Ayub Chikna and is involved in continuing unlawful activities and most importantly has any role in the abetment of the present crime in C.R. No. 17/2019. Hence, we are of the opinion that the prosecution has failed to place on record any reliable and cogent material which

would establish the indictment of the Appellant in the present case. The prosecution has failed to place on record any material on record which would show that the Appellant reced Panvel area and the entire route taken by the complainant from Panvel to Chinchpokli and provided material and live information about the movement of the complainant to the other co-38 of 40 accused, that the CCTV footage and CDR evidence relied upon by the prosecution established the presence of the Appellant in Panvel area in Chinchpokli area and near the scene of crime and the recovery of the amount of Rs. 10,200/- from the Appellant was linked to the consideration received by the Appellant for providing the aforesaid information to the other co-accused, all on the instructions and at the behest of the gang leader of the organized crime syndicate, Ayub Chikna. In our opinion the learned trial court in the impugned order has not given any reasons whatsoever to prove the involvement of the Appellant in the aforesaid crime."

(Emphasis added) Thus, reliance placed on the said decision has no relevance as far as the facts of the present Application are concerned.

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22. Reliance is also placed on Dinesh Bhondulal Baisware (supra). However, it is to be noted that in the said case, on the basis of factual situation of that case, it has been held that there is no nexus between the Applicant and the concerned organised crime syndicate. Therefore, the said case will have no bearing on the facts of the present case.

23. As far as the reliance on Girish Kumaran Nayar (supra) is concerned, the question was regarding whether before granting prior approval by the authority, any past Charge-sheets were considered. Therefore, the said decision will have no application to the present case.

24. Thus, none of the decisions relied upon by Mr. Gole, learned Counsel of the Applicant are applicable to the present case.

25. It has been already held herein above that the material on record clearly shows that there is a nexus or a link of the Applicant with an organised crime syndicate operating in the name and style as 'german gang' of which, the Accused No.1-Abhishek Tarane is the gang leader. Thus, there is no substance in the contention of Mr. Gole, learned Counsel for the Applicant that the Applicant has no nexus with the said organised crime syndicate and therefore, the provisions of the MCOC Act cannot be invoked against the Applicant.

SECOND POINT:-

Whether the satisfaction can be recorded in favour of the Applicant with respect to twin conditions as envisaged in 518-BA-680-2023-F (J).doc Section 21(4) of the MCOC Act?

26. Before considering the rival submissions, it is necessary to set out Section 21(4) of the MCOC Act which is concerning grant of bail when the offence is under the MCOC Act.

"21. Modified application of certain provisions of the Code.

...

(4) Notwithstanding anything contained in the Code, 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; and

(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."

(Emphasis added) Thus, as per Section 21(4) of the MCOC Act, following requirements are to be complied with:

(i) The Public Prosecutor is required to be given an opportunity to oppose the Application of release on bail.

(ii) If the Public Prosecutor opposes the Application then in that event the Court is required to record satisfaction regarding following two aspects:

(a) There are reasonable grounds for believing that the Applicant is not guilty of such offence.

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(b) The Applicant is not likely to commit any offence while on bail.

27. Thus, for granting the Application of the Applicant seeking bail, this Court will have to record satisfaction as required under Section 21(4) of the MCOC Act. The Supreme Court has considered the scope and nature of said satisfaction in the case of Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra 13, wherein it has been held as under:

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a

judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the 13 (2005) 5 SCC 294 518-BA-680-2023-F (J).doc evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

(Emphasis added)

28. In Vijay Madanlal Choudhary v. Union of India 14, the Supreme Court while considering similar provisions viz. Section 45(1) of the Prevention of Money Laundering Act, 2002 , after noticing the decision in Ranjitsing (supra), held as follows:

"401. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by

this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."

(Emphasis added) 14 2022 SCC OnLine SC 929 518-BA-680-2023-F (J).doc

29. Mr. Gaikwad, learned APP also relied on the decision of the Supreme Court in Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) 15, and more particularly on paragraph No.24 thereof, which read as follows:

"24. The principles governing the grant of bail were reiterated by a two-Judge Bench in Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] : (SCC p. 499, para 9) "9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail."

Explicating the power of this Court to set aside an order granting bail, this Court held : (Prasanta Kumar Sarkar 15 (2021) 6 SCC 230 518-BA-680-2023-F (J).doc [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] , SCC p. 499, para 10) "10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal."

30. Mr. Gaikwad, learned APP also relied on the decision of the Supreme Court in State of Maharashtra v. Vishwanath Maranna Shetty and more particularly on paragraph Nos.19, 29, and 30 thereof, which read as under:

"19. In the earlier part of our judgment, we extracted Section 21(4) of MCOCA which bars the court from releasing the accused of an offence punishable under the said Act subject to the conditions prescribed in clauses (a) and (b) therein. We are of the view that sub-section (4) of Section 21 mandates that it is incumbent on the part of the court before granting of bail to any person accused of an offence punishable under MCOCA that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while on bail.

...

29. While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. In view of the above, we also reiterate that when a prosecution is for 16 (2012) 10 SCC 561 518-BA-680-2023-F (J).doc offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub- section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz.

(i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not

guilty, has to be based on "reasonable grounds". Though the expression "reasonable grounds" has not been defined in the Act, it is presumed that it is something more than prima facie grounds.

We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA.

30. The analysis of the relevant provisions of MCOCA, similar provision in the NDPS Act and the principles laid down in both the decisions shows that substantial probable cause for believing that the accused is not guilty of the offence for which he is charged must be satisfied. Further, a reasonable belief provided points to existence of such facts and circumstances as are sufficient to justify the satisfaction that the accused is not guilty of the alleged offence. We have already highlighted the materials placed in the case on hand and we hold that the High Court has not satisfied the twin tests as mentioned above while granting bail."

(Emphasis added) 518-BA-680-2023-F (J).doc

31. Thus, it is incumbent on the part of the Court before granting of bail to any person accused of an offence punishable under MCOC Act, to record satisfaction that there are reasonable grounds for believing that the Applicant is not guilty of such offence and that the Applicant is not likely to commit any offence while on bail. It has been reiterated by the Supreme Court in Vishwanath Maranna Shetty (supra) that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of Sub-Section 4 of Section 21 of the MCOC Act is conditio sine qua non for granting bail under MCOC Act.

32. As already noted herein above, this is a case where the Applicant is a member of 'german gang' and he was demanding an extortion amount of Rs.1,00,000/- from the deceased who was unable to pay the said extortion amount. As the deceased only paid Rs.25,000/-, the Applicant caught hold of the deceased and snatched gold ornaments from him and further demanded an additional Rs.25,000/- from him. As per the prosecution case, the deceased could no longer tolerate this pressure and he eventually died by suicide. The contents of the F.I.R., statement of the mother of the deceased, statements of witnesses including that of Akash Subhash Kadam and the suicide note of the deceased clearly show the involvement of the Applicant in offence in question and also show that the Applicant is an active member of the said 'german gang'. There is sufficient material on record and in view of 518-BA-680-2023-F (J).doc the same, it cannot be said at this stage of consideration of Bail Application that there are reasonable grounds for believing that the Applicant is not guilty of such an offence.

33. Thus, this is not a case where it can be said that there are reasonable grounds for believing that the Applicant has not committed the offence in question. The factual position on record shows that the Applicant was actively involved in the offence in question.

34. As far as the satisfaction required to be recorded by the Court regarding the second aspect that the Applicant is not likely to commit any offence while on bail, Mr. Gaikwad, learned APP has

tendered a copy of F.I.R. No.320 of 2024 registered with the Juna Rajwada Police Station for the offences punishable under Sections 353, 332, 324, 323, 143 and 147 of the Indian Penal Code, 1860. The Applicant has committed the said offence while in prison. He submitted that the manner in which the offence in question took place as well as the offence for which F.I.R. No.320 of 2024 has been lodged, satisfaction cannot be recorded to the effect that the Applicant is not likely to commit any offence while on bail.

35. It is settled law that such future offence contemplated under Section 21(4) of the MCOC Act is the offence under the MCOC Act. In view of the manner in which the Applicant committed the offence in prison (F.I.R. No.320 of 2024) and the manner in which the present 518-BA-680-2023-F (J).doc offence in question was committed, satisfaction that the Applicant will not commit another offence while on bail, cannot be recorded.

36. THIRD POINT:-

Whether parity is applicable to the Applicant in terms of order granting bail to the Accused No.3 by Order dated 10th August 2022 passed by the learned Additional Sessions Judge, Ichalkaranji?

37. It is the submission of Mr. Gole, learned Counsel for the Applicant that the Accused No.3-Aniket Subhash Badave has been released on bail by the learned Additional Sessions Judge, Ichalkaranji vide Order dated 10th August 2022 passed in Spl. (MCOCA) Case No. 26/22 (Exh.4) by observing that it is the only offence and Charge-sheet registered against the said Accused and hence, there is no 'continuing unlawful activity' within the meaning of Section 2(d) of the MCOC Act. Hence, as no offence was made out under the MCOC Act, the learned Sessions Judge granted bail to the co-Accused.

38. It is true that by said Order dated 10th August 2022, the learned Additional Sessions Judge, Ichalkaranji has granted bail to the Accused No.3-Aniket Subhash Badave and in paragraph No.10 of the said Order it is observed as follows:

"10. The chargesheet of C.R. No.577/2021 disclose that this is the first chargesheet against the applicant/accused no.3. Hence there is no 'continuing unlawful activity' of applicant/accused no.3 within the meaning of section 2(d) of MCOC Act. Hence prima facie offence of organized crime 518-BA-680-2023-F (J).doc punishable under section 3(1)(i), (ii), (2) and (4) of MCOC Act is not made out against the applicant/accused no.3. Hence the restrictions under Section 21(4) & 5 of MCOC Act for grant of bail under section 439 of the Cr.P.C. are not obstacles so far as applicant/accused no.3. is concerned."

(Emphasis added)

39. The above observations of the learned Additional Sessions Judge are contrary to the settled law as discussed in earlier part of this Judgment. In Govind Sakharam Ubhe (supra), it has been

specifically held that the words "more than one charge-sheet" contained in Section 2(1)(d) of the MCOC Act refer to unlawful activities of the organised crime syndicate and therefore, requirement of more than one Charge- sheet is qua the unlawful activities of the organised crime syndicate and not qua the individual member thereof. What is important is the nexus or the link of the person with the organised crime syndicate. The link with the 'organised crime syndicate' is the crux of the term 'continuing unlawful activity'. If this link is established, then provisions of MCOC Act can be invoked. The Supreme Court in Zakir Abdul Mirajkar (supra) in paragraph No.79 has held that persons who are alleged to be members of an organised crime syndicate need not have more than one Charge-sheet filed against them in an individual capacity. Rather, Charge-sheets with respect to the organised crime syndicate are sufficient to fulfil the condition in Section 2(1)(d) of the MCOC Act. Thus, the Order of the learned Additional Sessions Judge granting bail 518-BA-680-2023-F (J).doc to co-Accused No.3-Aniket Subhash Badave is contrary to the settled law. The material on record clearly shows that there is a nexus or a link of the Accused No.3-Aniket Subhash Badave with an organised crime syndicate operating in the name and style as 'german gang' of which Accused No.1-Abhishek Tarane is the gang leader and therefore, provisions of MCOC Act are attracted to this case. Thus, while granting bail, the Court is required to record satisfaction with respect to the twin conditions as contained in Section 21(4) of the MCOC Act. Thus, the learned Additional Sessions Judge is not right in observing that restrictions under Sub-Sections 4 and 5 of Section 21 of the MCOC Act for grant of bail under Section 439 of the CrPC are not obstacles insofar as Accused No.3 is concerned.

40. In this background of the matter, submission of Mr. Gole, learned Counsel for the Applicant that parity is applicable to the Applicant in view of said Order 10th August 2022 passed by the Additional Sessions Judge, is required to be examined.

41. A Division Bench of the Allahabad High Court in the case of Chander v. State of U.P. 17 decided a reference made by a learned Single Judge who had formulated the following questions for decision:

"Let the papers of this case be laid before Hon'ble The Chief Justice for constituting a larger Bench to lay down guidelines as to what should be done in a case like this where bail has been granted to a co-accused, and whether in the present case (1) the bail application of the applicant should be 17 1997 SCC OnLine All 1092 518-BA-680-2023-F (J).doc rejected although bail has been granted to a co-accused whose case is on the same footing (2) whether bail granted to the co-accused should be cancelled."

42. In Chander (supra), the Division Bench of the Allahabad High Court held that if bail has been granted in flagrant violation of well settled principles, the order granting bail would not be in accordance with law. Such an order can never form the basis for a claim founded on parity. It has been further held that, the grant of bail is not a mechanical act and principle of consistency cannot be extended to repeating a wrong order. If the order granting bail to an identically placed co-Accused has been passed in flagrant violation of well settled principles, it will be open to the Judge to reject the bail application of the Applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency. The Division Bench of the Allahabad High

Court answered the said reference as follows:

"1. If the order granting bail to an accused is not supported by reasons, the same cannot form the basis for granting bail to a co-accused on the ground of parity.

2. A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.

3. A Judge hearing bail application of one accused cannot cancel the bail granted to a co-accused by another Judge on the ground that the same had been granted in flagrant violation of well settled principles. If he considers it necessary in the interest of justice, he may, after expressing his views, refer the matter to the Judge who had granted 518-BA-680-2023-F (J).doc bail, for appropriate orders.

4. If it appears that a bail order has been passed in favour of an accused on the basis of wrong or incorrect documents it is open to any Judge to initiate action for cancellation of bail."

43. The Supreme Court in the case of Tarun Kumar v. Enforcement Directorate 18 has held as follows:

"19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision."

44. Thus, on the touchstone of the above settled law concerning ground of parity for grant of bail, the Applicant is not entitled for release on bail on the ground of parity as the Order granting bail to Accused No.3 is inter alia granted by overlooking the law laid down by the Division Bench of this Court in Govind Sakharam Ubhe (supra) and by the Supreme Court of India in Zakir Abdul Mirajkar (supra).

45. Therefore, no case is made out for granting bail.

46. However, there is some substance in the contention of Mr. Gole, learned Counsel for the Applicant that the Applicant is incarcerated 18 2023 SCC OnLine SC 1486 518-BA-680-2023-F

(J).doc since 10th November 2021 and that there is no progress in the trial.

47. Mr. Gaikwad, learned APP relied on the decision of Gurwinder Singh v. State of Punjab 19 and submitted that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. He also relied on a Division Bench decision of this Court in Kailash S/o Premchand Ramchandani v. State of Maharashtra 20, wherein it has been held that mere delay in the trial pertaining to grave offences by itself cannot be a ground to enlarge an accused on bail, dehors the facts. The offence involved in the present case is extremely grave and serious.

48. In the present case, as set out herein above, the Applicant is involved in a serious offence punishable inter alia under the provisions of the MCOC Act. Accordingly, the Applicant is not entitled to be released on bail.

49. Accordingly, the Bail Application is rejected.

50. However, as the Applicant is incarcerated since 10 th November 2021, the learned Trial Court is requested to conclude the trial expeditiously.

51. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.] 19 2024 SCC OnLine SC 109 20 Criminal Appeal No.1249 of 2023