

Ajay Himmatlal Gosalia vs The State Of Maharashtra on 10 April, 2024

Author: N. J. Jamadar

Bench: N. J. Jamadar

2024:BHC-AS:16904

3-BA-797-23+BA.DOC

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 797 OF 2023

Sameer Taj Khan

...Applicant

Vs.

The State of Maharashtra

...Respondent

BAIL APPLICATION NO. 1856 OF 2023

Firoz Hussain Shaikh

...Applicant

Vs.

The State of Maharashtra

...Respondent

BAIL APPLICATION NO. 3159 OF 2022

Ajay Himmatlal Gosalia

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Abad Ponda, Senior Advocate, with Rajendra Rathod with
Ms. Shabana Shah, Nadim Malik, Dhruv Jain, Mr. Iftekhhar
Sayed, for Applicant in BA No. 797/2023.

1/26

::: Uploaded on - 10/04/2024

::: Downloaded on - 12/04/2024 0
3-BA-797-23+BA.DOC

Mr. Sanjay Dubey with Ms. Puja Bhatt, for Applicant in
BA/1856/2023.

Mr. Dinesh D. Tiwari with Ansh Karnawat Pulkeshi Gaikwad
i/b Dinesh D. Tiwari and Associates, for Applicant in 3159 of
2022.

Ms. Anamika Malhotra, APP for State/Respondent No. 1.

Mr. Sudhir Jadhav, PI, AEC. DCB, CID, Mumbai.

CORAM:- N. J. JAMADAR, J.
RESERVED ON 14th MARCH, 2024.
PRONOUNCED ON:- 10th APRIL, 2024

ORDER:

-

1) Heard the learned Counsel for the applicants and the learned APP for the State.

2) The applicants, who are arraigned in MCOC Special Case No. 1513 of 2022 arising out of D.C.B., C.I.D., CR No. 150 of 2022 (original CR No. 540 of 2022 registered with Versova Police Station) for the offences punishable under Sections 120B, 386, 506 (2) read with Section 34 of the Indian Penal Code, 1860 ('the Penal Code') and Sections 3 (1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 ('the MCOCA), have preferred these applications to enlarge them on bail.

3-BA-797-23+BA.DOC Prosecution Case

3) The prosecution case can be stated in brief as under. (A) The first informant deals in the business of catering and gold. A year prior to the lodging of the report, he became acquainted with Riyaz Ahmed Bhati @ Riyaz Ahmed Siraj Ahmed Bhati (A1). A party to celebrate the birthday of Riyaz Bhati (A1) was arranged on 19th February, 2021 at Sahara Star Hotel, Vile Parle, Mumbai. The first informant attended the said party. A number of persons had also attended the said party. In the said

party, Riyaz Bhati (A1) introduced the first informant to Mohammed Salim Iqbal Qureshi @ Salim Fruit (A2), as the co- brother of dreaded gangster Shakil Babu Mohiddin Shaikh @ Chhota Shakil (wanted accused) and the person who was managing the affairs of wanted accused in Mumbai. (B) First informant used to play cards at the club run by Shekhar Shetty @ Shekhar Anna at Matunga. Salim Fruit (A2) also played cards in the said club. In a game, Salim Fruit (A2) lost but refused to pay the money flaunting his relationship with wanted accused. A few days later, Salim Fruit (A2) won the game and claimed that an exorbitant amount of Rs.62,00,000/- was due and payable by the first informant to Salim Fruit (A2). After 3-BA-797-23+BA.DOC a week, Salim Fruit (A2) started to demand the money from the first informant and also gave threats. Putting the first informant in fear, Salim Fruit (A2) made the first informant deliver a Range Rover Car bearing No. MH-01-BY-7120. An amount of Rs. 30,00,000/- only was adjusted against the said car. Salim Fruit (A2) continued to demand the balance amount of Rs. 32,00,000/- by giving threats of dire consequences. The first informant transferred an amount of Rs.7,00,000/- in the accounts indicated by Salim Fruit (A2).

(C) National Investigation Agency (NIA) arrested Salim Fruit (A2) on 4th August, 2022. On 8th August, 2022, the first informant met Riyaz Bhati (A1). The latter attempted to dissuade the first informant from disclosing true facts to the investigating agency by threatening that if he did so, he would be inviting the wrath of the entire Dawood gang and the first informant would repent.

(D) The first informant, thus, approached Versova police station and lodged a report against Riyaz Bhati (A1) and Salim Fruit (A2) to the effect that they, in pursuance of a conspiracy attempted to extort an amount of Rs.62,00,000/-, he was divested of a Car and made to transfer an amount of 3-BA-797-23+BA.DOC Rs.7,00,000/- in the account of witness 'W' at the instance of the accused.

(E) In the supplementary statement, the first informant further alleged that Riyaz Bhati (A1) had asked him to bear the expenses of the birthday party held on 19th February, 2021. When the first informant requested Riyaz Bhati (A1) to repay the amount, spent by the first informant for the said party, Riyaz Bhati (A1) threatened the first informant by giving a reference of his friendship with Salim Fruit (A2). The latter also asked the first informant to forget the said amount.

(F) During the course of investigation, it transpired that the applicants, Riyaz Bhati (A1) and Salim Fruit (A2) and the co- accused Javed Shabuddin Khan @ Papa Pathan (A6) and Amjad Rais Redkar (A3) had hatched a conspiracy in the birthday party of Riyaz Bhati (A1) to extort a huge sum of money from the first informant. It further transpired that the applicants and the co- accused were members of an organized crime syndicate, of which Chhota Shakil (the wanted accused) was the leader. The applicants and the co-accused had been indulging in continuous unlawful activity with a view of obtaining a pecuniary advantage. Thus, after obtaining the prior approval of the competent 3-BA-797-23+BA.DOC authority under Section 23 (1) (a) of the MCOCA, 1999, the offences punishable under Sections 3 (1)(ii), 3(2), 3(4) of the MCOCA, 1999 were added. The applicants and co-accused were arrested.

4) As the learned Special Judge (MCOC) declined to exercise discretion in favour of the applicants, they have preferred these applications.

5) An affidavit-in-reply is filed in each of the applications opposing the prayers for bail. The thrust of the resistance put forth by the prosecution is that the evidence collected during the course of investigation revealed that the offences were committed by the applicants and the co-accused as members of the organized crime syndicate headed by the wanted accused - Chhota Shakil, by taking active participation in the said offences with the motive of pecuniary gains and other advantages. The applicants and the co-accused have been creating terror in the minds of the businessmen. Reference is made to the numerous cases registered against Chhota Shakil, the wanted accused, and Riyaz Bhati (A1), to show that the applicants and the co-accused were indulging in continuous unlawful activity. To buttress this charge the prosecution banks 3-BA-797-23+BA.DOC upon the statements of witnesses, to which reference would be made a little later.

6) I have heard Mr. Abad Ponda, the learned Senior Advocate for the applicant - Sameer Khan (A4) in BA No. 797 of 2023. Mr. Sanjay Dubey, the learned Counsel for the applicant - Firoze Shaikh @ Firoze Chamda (A7), the applicant in BA No. 1856 of 2023, Mr. Dinesh Tiwari, the learned Counsel for the applicant- Ajay Gosalia (A5) in BA No. 3159 of 2022 and Ms. Anamika Malhotra, the learned APP for the State-Respondent No. 1 in all the applications.

Submissions

7) The submissions on behalf of the applicants proceeded on the following lines.

(a)- No case for invocation of the provisions contained in MCOCA, 1999 was made out.

(b)- Initially FIR was lodged against Riyaz Bhati (A1) and Salim Fruit (A2) only and the applicants were nowhere in the frame.

(c)- There is not an iota of evidence to indicate that the applicants were members of the organized crime syndicate led by Chhota Shakil (wanted accused).

3-BA-797-23+BA.DOC

(d) In none of the crimes registered against Chhota Shakil, or for that matter Riyaz Bhati (A1) and Salim Fruit (A2), the applicants Sameer Taj Khan (A4) and Firoze Chamda (A7) have been shown as the co-accused.

(e)- There are no antecedents of the applicants Sameer Taj Khan (A4) and Firoze Hussain Shaikh @ Firoze Chamda (A7). Ajay Himmatlal Gosalia @ Ajay Ganda (A5), the applicant in BA No.3159 of 2022, has been discharged in one of the crimes and acquitted in another and the Prosecution arising out of CR No. 230 of 2008 is pending and all those cases were registered prior to 10 years.

(f) The two circumstances pressed into service by the prosecution namely that the applicants had attended the birthday party of Riyaz Bhati (A1), and that Salim Fruit (A2) had asked one of the witnesses to withdraw the amount from the account of the said witness and distribute the same amongst the applicants and co- accused, do not have any incriminating tendency. More than 200

guests attended the party hosted by Riyaz Bhati (A1). The witness has categorically stated that he 3-BA-797-23+BA.DOC did not deliver the money to the applicants and the co-accused and instead delivered back the amount to Salim Fruit (A2). In substance, there is no link between the applicants and the alleged extortion committed by Riyaz Bhati (A1) and Salim Fruit (A2).

(g) The applicants, who have been in custody for almost 18 months, have been falsely roped in and, therefore, the further detention of the applicants without there being any incriminating material is wholly unwarranted.

(h) The interdict contained in Section 21(4) of the MCOCA, 1999, does not come into play. Resultantly, the applicants deserve to be enlarged on bail.

8) In opposition to this, Ms. Malhotra, the learned APP stoutly resisted the prayers for bail. It was submitted that Chhota Shakil, the wanted accused, is declared as a terrorist by notifying him in the Fourth Schedule of the Unlawful Activities (Prevention) Act, 1967 vide Notification dated 27th October, 2020. More than 100 cases involving grave offences have been registered against wanted accused, under Indian Penal Code, 1860 and MCOCA, 1999. A reign of terror has been created by the organized crime syndicate led by the wanted accused.

3-BA-797-23+BA.DOC Therefore, according to Ms. Malhotra, the allegations against the applicants are required to be considered keeping in view the said context.

9) Ms. Malhotra submitted that there is material to indicate that the first informant was divested of Range Rover Car and made to transfer an amount of Rs.7,00,000/- in the account of the witness 'W' by Salim Fruit (A2). The said witness transferred the amount to the account of witness 'J'. In his statement witness 'J' clearly states that Salim Fruit (A2) had asked him to withdraw the amount from his account and distribute the same amongst applicants and the co-accused. It was submitted that the fact that the said witness refused to deliver the amount to the applicants and the other co-accused, does not detract materially from the prosecution.

10) Ms. Malhotra urged that there are statements of witnesses, who have overheard the conversation amongst the applicants and the co-accused to extort money from the first informant, at the birthday party of Riyaz Bhati (A1). In addition, there are call data records indicating that the applicants and the co-accused were in regular touch with each other. Therefore, according to Ms. Malhotra, there is overwhelming material to 3-BA-797-23+BA.DOC show that the applicants were members of the organized crime syndicate led by the wanted accused. Thus, the applicants do not deserve to be released on bail.

11) I have carefully perused the material on record and given anxious consideration to the rival submissions.

Consideration

12) First and foremost, it is imperative to note that the first informant lodged FIR on 26th September, 2022, alleging that the extortion was committed during the period 1 st February, 2021 to 8th August, 2022. Allegations were primarily made against Riyaz Bhati (A1) and Salim Fruit (A2). The genesis of the occurrence also deserves to be kept in view. The first informant alleged that he had lost money in gambling and Salim Fruit (A2) was extorting money from him on the said count. Evidently, in the FIR, the applicants were nowhere in the frame.

13) The case of the prosecution centers around hatching of the criminal conspiracy to extort money from the first informant at the birthday party of Riyaz Bhati (A1). It is in the supplementary statement recorded on 29th September, 2022, the first informant alleged that Riyaz Bhati (A1) had asked him to bear the expenses of the party to be arranged to celebrate his 3-BA-797-23+BA.DOC birthday on 19th February, 2021. The first informant claimed to have incurred expenses of Rs.5.75 lakhs. Later on, Riyaz Bhati (A1) refused to pay the said amount and gave a threat of dire consequences.

14) Prima facie, it is imperative to note that in the FIR the first informant had made allegations against Riyaz Bhati (A1). In ordinary course, having already made the allegations against Riyaz Bhati (A1), the first informant would not have missed to state the fact that he had incurred expenses of the birthday party of Riyaz Bhati (A1) and the latter had refused to repay the money and gave a threat of dire consequences, if the first informant insisted for the repayment.

15) In the backdrop of this apparent inconsistency in the allegations in the FIR regarding the cause of extortion and the supplementary statement of the first informant, the questions as to whether the offences allegedly committed by Riyaz Bhati (A1) and Salim Fruit (A2), fall within the dragnet of 'organized crime' and those offences were committed by the co-accused and/or applicants as members of the organized crime syndicate, deserve to be appreciated, albeit prima facie.

3-BA-797-23+BA.DOC

16) At the outset, in view of the invocation of the provisions contained in the MCOC Act, 1999, the applicability of the bar under Section 21(4) of the MCOC Act, 1999, is required to be appreciated. Sub-section (4) of Section 21 incorporates an interdict against release on bail of a person accused of an offence punishable under the MCOC Act, 1999, unless the Court forms an opinion that the said person is not guilty of the offence for which he is arraigned and is not likely to commit an offence upon his release on bail.

17) The nature and import of the restrictions on the grant of bail envisaged by Section 21(4) of the MCOC Act, 1999 was expounded by the Supreme Court in the case of Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and Anr. 1. The following observations of the Supreme Court are instructive and hence extracted below :

"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 1(2005) 5 SCC 294 3-BA-797-23+BA.DOC 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 future 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 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."

18) It may also be expedient to immediately notice the ingredients of the offence of organized crime. In the case of Zakir Abdul Mirajkar vs. State of Maharashtra² the Supreme Court, after analysing the definitions of organized crime (Section 2(1)(e)), organized crime syndicate (Section 2(1)(f)) and continuing unlawful activity (Section 2(1)(d)) illuminatingly postulated the essential elements of the "organized crime" as under:

2 2022 ALL MR (Cri) 3798 (S.C.).

3-BA-797-23+BA.DOC "17. The expression 'organized crime' is defined with reference to a continuing unlawful activity. The definition is exhaustive since it is prefaced by the word 'means'. The ingredients of an organized crime are:

a. The existence of a continuing unlawful activity; b. Engagement in the above activity by an individual; c. The individual may be acting singly or jointly either as a member

of an organized crime syndicate or on behalf of such a syndicate;

d. The use of violence or its threat or intimation or coercion or other unlawful means; and e. The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.

18. The above definition of organized crime, as its elements indicate, incorporates two other concepts namely, a continuing unlawful activity and an organized crime syndicate. Hence, it becomes necessary to understand the ambit of both those expressions. The ingredients of a continuing unlawful activity are:

a. The activity must be prohibited by law for the time being in force;

b. The activity must be a cognizable act punishable with imprisonment of three years or more; c. The activity may be undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such a syndicate.

d. More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceding period of then years; and e. The court should have taken cognizance of the offence.

19. The elements of the definition of 'organized crime syndicate' are:

a. A group of two or more persons;

b. Who act singly or collectively, as a syndicate or gang; and c. Indulge in activities of organized crime.

20. Both Section 2(1)(d) while defining 'continuing unlawful activity' and Section 2(1)(e) while defining 'organized crime' contain the expression 'as a member of an organized crime syndicate or on behalf of such syndicate, Section 2(1)(f) refers to 'activities of organized crime'."

3-BA-797-23+BA.DOC

19) In the light of aforesaid enunciation, at the outset, a submission assiduously canvassed on behalf of accused, especially Sameer Taj Khan (A4) and Firoze Chamda (A7) that, since no crime has been registered against them, they cannot be roped in by invoking the provisions contained in Section 2(1)(d) for being member of organized crime syndicate punishable under Section 3(4) of the MCOC Act, 1999, deserves to be noted.

20) Suffice it to note that it is not the requirement of law that one or more charge-sheets for the offences, which entail punishment for more than three years, ought to have been filed against each of the accused. The requirement of more than one charge-sheet is in respect of the organized crime

syndicate and not qua each accused, who is alleged to be a member of organized crime syndicate.

21) In the case of Govind Sakharam Ubhe vs State of Maharashtra³ it was enunciated as under:

"37. 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 3 2009(3) Bom C.R.(Cri.) 144.

3-BA-797-23+BA.DOC 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 supplied)

22) In the case of Zakir Mirajkar (supra) the Supreme Court approved the aforesaid enunciation and observed that it is settled law that more than one charge-sheet is required to be filed in respect of the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate. Nonetheless, there should be prima facie material to indicate that the offences were committed either singly or jointly as a member of an organized crime syndicate.

23) The aforesaid enunciation of law would indicate that it is the nexus or the link of the person with an organized crime syndicate that is of determinative significance. If it could be shown that a person, who is alleged to be a member of the organized crime syndicate, has a nexus with the organized crime syndicate, he can be arraigned for the offences punishable under Section 3 (1)(ii), 3(2), 3(4) of the MCOCA, 1999, even if he has no criminal antecedent. It is the link of the person alleged to be a member of the syndicate with the organized crime syndicate that is the linchpin of the offence. If such nexus could 3-BA-797-23+BA.DOC not be established, that person cannot be roped in by invoking the provisions contained in the MCOC Act, 1999.

24) In the light of the aforesaid position in law, the entitlement for bail of each of the applicants is required to be appreciated in the context of the role attributed to, and the material arrayed against, each of them. At the cost of repetition, it must be noted that the consideration is prima facie.

25) On the aforesaid touchstone, if facts of the case at hand are examined, albeit, prima facie, it becomes evident that two prime circumstances pressed into service against the applicants are that : one, they had attended the birthday party of Riyaz Bhati (A1) and, in the said birthday party, a conspiracy was hatched to extort money from the first informant. Two, pursuant to the said conspiracy, money was, in fact, extorted from the first informant and Salim Fruit (A2) had directed his associates to distribute the proceeds of the crime amongst the co-accused including the

applicants.

26) The first circumstance that the applicants had attended the birthday party of Riyaz Khati (A1), in itself, *prima facie*, does not seem to have any incriminating tendency. By the own showing of the prosecution, more than 200 persons had 3-BA-797-23+BA.DOC attended the said birthday party. The allegations that, in the said birthday party, the conspiracy was hatched to extort money from the first informant is sought to be substantiated on the strength of the statement of witness 'U' who claimed to have overheard the conversation.

27) Witness 'U' stated that, in the said party, the applicant - Ajay Gosalia (A5) told him that the birthday party was arranged by the first informant, Riyaz Bhati (A1) had instructed Ajay Gosalia (A5) to keep a watch on the first informant, Salim Fruit (A2) stated that the first informant could be their next target and Applicant - Sameer Khan (A4) and the co-accused seconded Salim Fruit (A2). In the statement recorded under Section 164 of the Code of Criminal Procedure, 1973, witness 'U' stated that in the said party, there was a discussion amongst the applicants and the co-accused that the first informant was financially strong and he could be pursued.

28) Witness 'H' stated that he had also attended the party. Upon being told that the said party was arranged by the first informant, the applicants, and the co-accused Salim Fruit (A2), Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6) had stated that he shall see what happens in the future and huge 3-BA-797-23+BA.DOC property could be extorted from the first informant.

29) *Prima facie*, the aforesaid statements lack the element of certainty as to the person, who was alleged to be a confederate in the conspiracy. The witnesses claimed to have overheard the conversation. The statements, therefore, *prima facie* do not appear to be sturdy enough to bear the weight of the accusation of criminal conspiracy. The aspect of the probability also deserves consideration as more than 200 persons had allegedly attended the said party, in which the conspiracy was allegedly entered into.

30) The second circumstance of the applicants being the beneficiaries of the alleged extortion rests on the statements of two witnesses. Witness 'W' stated that on 8th October, 2022, Salim Fruit (A2) had asked him to share his bank account details. On the same day, a sum of Rs.2,00,000/- was credited to his account from the account of the wife of witness 'S.' By 20th May, 2022, a sum of Rs.3,00,000/- was deposited in the account of the witness 'W'. Salim Fruit (A2) asked him to withdraw the said amount and distribute the same amongst the applicants and the co-accused Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6). The said witness 'W' asked Salim 3-BA-797-23+BA.DOC Fruit to give the account numbers of the applicants and the co-accused to transfer the said amount. Thereupon, Salim Fruit (A2) asked him to transfer the money to the account of witness 'J'. Accordingly, he had transferred some amount to the account of witness 'J' and some part of the amount was paid in cash to Salim Fruit (A2). In the statement recorded under Section 164 of the Code, 1973, witness 'W' did not state that Salim Fruit (A2) had asked him to distribute the amount amongst the applicants and the co-accused.

31) Witness 'J' stated that Salim Fruit (A2) had asked him to distribute the amount, which was credited to his account by witness 'W', amongst the applicants and the co-accused Amjad Redkar (A3) and Javed Khan @ Papa Pathan (A6). However, he had declined to do so. Instead, he had paid the said amount in cash to Salim Fruit (A2).

32) The aforesaid clear and categorical statement of witness 'J' gives heft to the submissions on behalf of the applicants that there is no material to indicate that any amount was, in fact, paid to the applicants and the co-accused, as alleged. It is for this reason, in the affidavit-in-reply, it is contended on behalf of the prosecution that the witnesses have stated that they were to 3-BA-797-23+BA.DOC deliver the amount to the applicants and the co-accused.

33) It is pertinent to note that witness 'J' categorically states that he had delivered the amount, which was credited to his account by witness 'W', in cash, to Salim Fruit (A2). Thus, prima facie, there is no material to show that any part of the alleged proceeds of crime was given to any of the applicants.

34) At this juncture, the fact that there were no allegations of whatsoever nature against the applicants in the FIR and the supplementary statement of the first informant deserves to be considered. The first informant does not claim that any of the applicants had made any attempt to extort money from the first informant. The reliance of the prosecution on the statements of the witnesses to the effect that they were aware that the applicants and the co-accused were in touch with Riyaz Bhati (A1) and Salim Fruit (A2) and indulged in unlawful activities, does not advance the cause of the prosecution. Such statements that the witnesses were "aware" and/or "knew" about the friendship and/or relationship between the applicants and the co-accused are not sufficient to establish the nexus between the applicants and the organized crime syndicate.

3-BA-797-23+BA.DOC

35) Evidently, applicants Sameer Khan (A4) and Firoze Chamda (A7) are not arraigned as co-accused in any of the crimes registered against the wanted accused or Riyaz Bhati (A1) and Salim Fruit (A2). Nay the applicants Sameer Khan (A4) and Firose Shaikh @ Firoze Chamda (A7) have no antecedents.

36) As regards applicant - Ajay Gosalia (A5) in the affidavit-in- reply the following offences were shown to have been registered against him.

Sr. No.	Police Station	C.R. No.	Sections
1	Kandivali Police Station	170/2000	U/s. 387, 120(b), 34 of IPC
2	Malad Police Station	622/2004	U/s. 143, 144, 145, 148, 149, 447, 341, 342, 363, 427, 506 r/w 37, 135 of Maharashtra Police Act.

37) In CR No. 170 of 2000, the applicant- Ajay Gosalia (A5) was

discharged by an order dated 2nd September, 2005. In Sessions Case No. 836 of 2006 along with Sessions Case No. 247 of 2010 arising out of CR No. 622 of 2004 registered with Malad Police Station, the applicant Ajay Gosalia (A5) was acquitted by a judgment and order dated 4th November, 2011. It is necessary to note that in CR No. 622 of 2004, Ajay Gosalia was arraigned 3-BA-797-23+BA.DOC along with Riyaz Bhati (A1) and wanted accused. However, with the acquittal in the said case, endeavour of the prosecution to link the applicant Ajay Gosalia with the organized crime syndicate falls through.

38) Reliance on the CDR to show that the applicants and the co-accused were in touch, in itself, without anything more, can not be a circumstance to establish nexus with the organized crime syndicate.

39) The conspectus of the aforesaid consideration is that there is prima facie no material to establish the nexus between the applicants and the alleged organized crime syndicate. Hence, I am impelled to hold that there are reasonable grounds to believe that the applicants may not be guilty of the offences for which they have been arraigned.

40) In the backdrop of the fact that the applicant Sameer Khan (A4) and Firose Shaikh @ Firoze Chamda (A7) have no antecedents and the applicant - Ajay Gosalia has been discharged and acquitted of the crimes in which he had been arraigned, and, even otherwise, more than 10 years have elapsed since the acquittal in CR No. 622 of 2004, at this stage, the Court may justifiably draw an inference that the applicants 3-BA-797-23+BA.DOC may not indulge in the identical offences, if released on bail.

41) I am, therefore, persuaded to exercise discretion in faovur of the applicants.

42) Hence, the following order.

:ORDER:

(i) The applications stand allowed.

(ii) The applicants be released on bail in MCOC Special

Case No. 1513 of 2022 arising out of D.C.B., C.I.D., CR No. 150 of 2022 (original CR No. 540 of 2022 registered with Versova Police Station) for the offences punishable under Sections 386, 120B, 506 (2) read with Section 34 of the Indian Penal Code, 1860 and Sections 3 (1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999, on furnishing a P.R. Bond in the sum of Rs.1,00,000/- each, with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicants shall mark their presence at D.C.B., C.I.D on the first Monday of every alternate month between 10.00 am to 12.00 noon for a period of three years or till conclusion of trial, whichever is earlier.

3-BA-797-23+BA.DOC

(iv) The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]