

MHCC020107492024



IN THE COURT OF ADDITIONAL SESSIONS JUDGE FOR
GREATER MUMBAI AT MUMBAI
ORDER BELOW EXHIBIT- 6
IN
MCOB SPL. CASE NO.1367 OF 2024
(CNR NO.MHCC02-010749-2024)

Vickykumar Sahebsah Gupta

Aged: about 24 years, Occ.: Farmer,
R/at- Mashi, Maziya, West Champaran,
Padraun, Bihar.

... Applicant

(Orig. Accused No.1)

*Versus***The State of Maharashtra,**

(At the instance of D.C.B. C.I.D., Mumbai
vide C.R.No.39/2024.)
(Bandra police station, C.R. No.577/2024)

... Prosecution

**CORAM : THE ADDL. SESSIONS JUDGE AND
THE SPECIAL JUDGE UNDER
MCOB/NIA/POTA ACT
B.D. SHELKE (COURT ROOM NO.55)**

DATE : 18.10.2024.**Appearance :**

Mr. Pankaj Ghildiyal, Ld. Advocate for applicant / Orig. accused no.1.
Mr. Wajeed Shaikh, Ld. SPP for State.

ORDER

This is an application u/S.439 of Cr.PC. and u/S.21(4)(b) of the MCOB Act for bail, filed by applicant / accused no.1- **Vickykumar Sahebsah Gupta**. He has been arrested in (Crime No.577/2024 registered with Bandra police station), C.R. No.39/2024 registered with D.C.B. C.I.D., Mumbai, u/Ss.307, 34, 120-B, 506(2), 115, 201 of Indian Penal Code (for short, 'IPC') r/w. Ss.3, 5, 25, 25(6), 25(7)(i), 25(8), 25(9), 27 of Arms Act r/w. Ss.37(1)(a), 135 of Maharashtra Police Act r/w. Ss.3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, 'MCOB Act '). Applicant / accused no.1 has been arrested on 16.04.2024. Now, he is in Judicial Custody.

2. Heard Ld. Counsel Mr. Pankaj Ghildiyal for the applicant / accused no.1 and Ld. SPP Mr. Wajeed Shaikh for the State.

3. The Ld. Counsel for the applicant / accused no.1 submitted that, this applicant was rider and accused no.2 has fired gunshot. There was no intention to kill the victim Salman Khan and the only object was to give threat. They did not know whether or not Salman Khan was in his house. The applicant / accused no.1 is a victim of circumstances. He belongs from labour class. The parents of applicant / accused no.1 also belongs from labour class. He was brought to Mumbai by accused no.2 under guise of employment. He is made scapegoat. He is a married person having two small children and wife behind him. There is no other breadwinner in his family. No further custodial interrogation is required. The trial against accused will take its own time. Victim of incident is superstar, there is no possibility of threatening him or tampering evidence. Nothing remained to be recovered or discovered. Alleged incident took place in the month of April 2024. There is no attempt to murder, hence provisions of Section 307 would not attract. Provisions of MCOC not attracts against this applicant as this applicant has no criminal antecedents. Thus, he urged for granting bail.

4. The Ld. SPP Mr. Wajeed Shaikh submitted that, in view of the decision of Hon'ble Apex Court in case of, **Zakir Abdul Mirajkar V/s. The State of Maharashtra & Ors., 2022 LiveLaw (SC) 707** more than one charge-sheet is not required in respect of each person who is alleged to be a member of such syndicate, therefore the applicant / accused no.1 has no criminal antecedents or there are no two previous charge-sheets against him is not a ground to say that provisions of MCOC Act would

not attract against him. He further submitted that, the material collected by prosecution demonstrates that 5 rounds of firearm were fired. The act of accused was coupled with intention and knowledge, they used firearm for commission of crime, therefore provisions of Section 307 of IPC would attract. He also invited attention of this Court on amended provisions of Arms Act and submitted that, now as per amended provisions of Arms Act punishment which may extent to life imprisonment has been provided under sub-section (7) of Section 25 of the Arms Act, therefore the contention of accused no.1 that all other offences registered against accused are bailable, has no substance. As per his submission all other offences are punishable for more than 3 years. The material collected by the investigating agency demonstrates that prior to firing, reiki of said place was did and thereafter in pre-planned manner to give effect to the conspiracy hatched by accused alongwith leader of gang and to achieve the object of conspiracy these accused reached to the residence of victim and made firing. The confessional statement of accused corroborates other evidence collected by investigating agency. Pistol has been recovered from the accused. The competent authority has issued prior approval order and also, sanction u/S.23(2) of MCOG Act. Thus, there is sufficient material regarding complicity of this accused no.1 in this case. Thus, in view of bar u/S.21(4) of MCOG Act he is not entitled for bail. Hence, urged for rejecting application.

5. Ld. SPP placed his reliance on following case laws:

Sr. No.	Case laws
1.	Zakir Abdul Mirajkar V/s. The State of Maharashtra & Ors., 2022 LiveLaw (SC) 707.
2.	State (NCT of Delhi) V/s. Brijesh Singh @ Arun Kumar, (2017) AIR (SCW) 4888.

3.	State of Maharashtra V/s. Balram Bama Patil & Ors., (1983) AIR (SC) 305.
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6. I gave thoughtful consideration to the arguments advanced on behalf of both sides. The recitals of FIR clearly demonstrates that two persons came on motorcycle and the pillion rider had fired gunshots at first floor of the house of victim. The statement of victim demonstrates that he is being a celebrity there are many fans of him from the society and he used to come in gallery of first floor of his house to greet them. Even, in early morning he used to stay in gallery of first floor of his house. Thus, the statement of victim and the recitals of FIR indicate at this stage that the shots were fired with the direction of his place of use in his house. The recitals of spot panchanama dated 14.04.2024 demonstrates that 4 empty cartridges and 1 live cartridge of firearm KF 7.65 have been recovered from the spot. These documents at this stage clearly demonstrates that the incident was occurred. Memorandum statement of accused no.2 and seizure panchanama shows that on the basis of disclosure statement made by accused no.2 mobile phone used by him has been seized at his instance, however the firearms thrown by him not found at said place. Even, the screenshot photographs of both accused captured in CCTV footage while proceeding on bike also placed on record. The memorandum statement of accused no.1 and seizure panchanama demonstrates that the clothes which were on the person of accused no.1 have been seized under this panchanama. The transcript in respect of call recording between accused no.1 and wanted accused Anmol Bishnoi has been placed on record by the prosecution which shows that on instigation and as per directions of wanted accused Anmol Bishnoi, these accused nos.1 and 2 have committed these acts. At this stage, the most important *prima-facie* evidence while deciding this

bail application is the confessional statement Part-II of accused no.1, which is at page 385 to 392 alongwith charge-sheet. The confessional statement Part-II of this accused no.1 clearly demonstrates that he was came in contact with accused no.2 and then joined the gang of wanted accused. He has stated all details how he joined this gang. He also stated entire incident how they did reiki and how they hatched to plan to make firing. All these documentary evidence placed on record by the prosecution at this stage clearly demonstrates the complicity of this accused in this crime. At this stage, all material placed on record by the prosecution is not required to be criticized, only it is required to be ascertained whether or not there is material in respect of complicity of this accused in this crime. The above referred material clearly demonstrates his complicity in this crime.

7. The Ld. Counsel for the applicant / accused no.1 in his arguments vehemently argued that S.307 of IPC would not attract. As against this, the Ld. SPP placed his reliance on decision in case of, **State of Maharashtra V/s. Balram Bama Patil & Ors., (1983) AIR (SC) 305**, wherein the Hon'ble Apex Court observed in Para 9 that,

“ What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in this section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.”

8. In present case at hand, the confessional statement of accused no.1 referred herein above coupled with above referred evidence clearly demonstrates these accused nos.1, 2 alongwith other wanted accused and leader of gang hatched conspiracy to kill the victim and with such

intention or knowledge they have did the criminal acts referred herein above making firing. Therefore, I do not find much substance in the arguments advanced by the Ld. Counsel for the applicant.

9. The next contention raised by the Ld. Counsel for the applicant is that this applicant / accused no.1 is having no criminal antecedents, therefore the provisions of MCOA Act would not be attract against him. The Ld. SPP placed reliance on decision in case of, **Zakir Abdul Mirajkar V/s. The State of Maharashtra & Ors., 2022 LiveLaw (SC) 707**, wherein the Hon'ble Apex Court has discussed in detail the provisions of MCOA Act, placed reliance on various decisions and held that,

“ Persons who are alleged to be members of an organized crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. Rather, charge-sheets with respect to the organized crime syndicate are sufficient to fulfill the condition in Section 2(1)(d).”

10. The Hon'ble Bombay High Court also in case of, **Govind Sakharam Ubhe V/s. State of Maharashtra, 2009 SCC OnLine Bom 770** held that,

“37.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 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."

11. In present case at hand, the prior approval order and sanction order placed on record demonstrates that previous charge-sheets have been filed against the organized crime syndicate in Jawahar Circle police station, Jaipur, Rajasthan vide C.R. No.80/2023 and the second charge-sheet is filed at NIA, New Delhi, RC No.39/2022/NIA/DLI. In those cases, gang-leader Lawrence Bishnoi alongwith Anmol Bishnoi and other associates hatched conspiracy and committed offence of firing on Hotelier and those offences have been registered. There is commonality between the earlier offences and this offence. Thus, in view of the decision in case of, **Govind Sakharam Ubhe V/s. State of Maharashtra** and in view of decision of Hon'ble Apex Court in case of, **Zakir Abdul Mirajkar V/s. State of Maharashtra (cited supra)** the

provisions of MCOG Act can be invoked against this accused. Merely, on the ground that there are no criminal antecedents against this accused no.1, he can not escape from the offences punishable under MCOG Act. Therefore, I do not find substance in the arguments advanced by the Ld. Counsel for the applicant that the provisions of MCOG Act would not attract against this applicant / accused no.1.

12. The Ld. SPP also placed reliance on decision in case of, **State (NCT of Delhi) V/s. Brijesh Singh @ Arun Kumar, (2017) AIR (SCW) 4888**, wherein the Hon'ble Apex Court held that,

“ Charge-sheets filed in competent Courts outside the National Capital Territory of Delhi can be taken into account for the purpose of constituting a ‘continuing unlawful activity’.”

Thus, the charge-sheets filed against leader of gang Lawrence Bishnoi and his associate Anmol Bishnoi who are wanted accused in this case can be taken into consideration.

13. **Section 21(4) of MCOG Act** clearly demonstrates that,

The accused shall satisfy two conditions for grant of bail- *(i) there are no reasonable grounds for believing that he is not guilty of such offence and; (ii) that he is not likely to commit any offence while on bail.* These two conditions have not been satisfied by this accused. This Court has discussed in detail the material placed on record by the prosecution, including confessional statement of this accused no.1. Which clearly demonstrates at this stage that he is having complicity in this crime. Even, considering nature of offence the possibility of repetition of similar crimes being a member of gang can not be ruled out. Therefore, this Court is of the view that the accused no.1 has not satisfied the above referred twin conditions laid down in Section 21(4)

of MCOC Act. Therefore, he is not entitled for bail. In the result, I pass following order :

ORDER

The Bail Application **Exhibit- 6** of applicant / accused no.1 – **Vickykumar Sahebsah Gupta** in C.R. No.39/2024 registered with D.C.B. C.I.D., Mumbai (Bandra police station, C.R. No.577/2024) for the offences punishable u/Ss.307, 34, 120-B, 506(2), 115, 201 of IPC r/w. Ss.3, 5, 25, 25(6), 25(7)(i), 25(8), 25(9), 27 of Arms Act r/w. Ss.37(1) (a), 135 of Maharashtra Police Act r/w. Ss.3(1)(ii), 3(2), 3(4) of MCOC Act is **rejected**.

BABARAO
DNYANOBA
SHELKE

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by BABARAO
DNYANOBA
SHELKE
Date:
2024.10.18
17:54:41 +0530

Dated: 18.10.2024.

(B.D. SHELKE)
ADDL. SESSIONS JUDGE
& SPECIAL JUDGE UNDER MCOC ACT
GREATER MUMBAI.



Direct Dictated on : 18.10.2024.
Checked on : 18.10.2024.
Signed on : 18.10.2024.

“ CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”.		
UPLOAD DATE	UPLOAD TIME	NAME OF STENOGRAPHER
18.10.2024	05.50 p.m.	N.S. Bakre
Name of the Judge (With Court Room No. 55)		HHJ Shri. B.D. Shelke
Date of pronouncement of JUDGMENT/ORDER		18.10.2024
JUDGMENT/ORDER signed by P.O. on		18.10.2024
JUDGMENT/ORDER uploaded on		18.10.2024