

(2025) 08 BOM CK 0236
In the Bombay High Court
Case No : Bail Application No. 3631 Of 2024

Krishna Shekar Shetty

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 12-08-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 39, 392
Maharashtra Control of Organised Crime Act, 1999 — Section 2(1)(d), 2(1)(e), 3(1)(ii), 3(2), 3(5), 21(4), 21(5), 21(7), 23
Bombay Police Act, 1951 — Section 55

Citation : (2025) 08 BOM CK 0236

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Pushpa Ganediwala, Onkar Bajaj, Anshu Agarwal, Mahalakshmi Ganapathy, Ajinath Funde

Final Decision : Disposed Of

Judgement

Amit Borkar, J

1. By this bail application, filed under Section 439 of the Code of Criminal Procedure, 1973, the applicant is seeking regular bail in connection with Crime Register No.750 of 2023 registered at Bandra Police Station, Mumbai. The offences alleged against the applicant are punishable under Sections 392 and 379 read with Section 34 of the Indian Penal Code, 1860, and also under Sections 3(1)(ii), 3(2), and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as "MCOC Act").

2. As per the prosecution's case, on 15th May 2023 at about 8:45 p.m., when the complainant was walking on the road while talking on his mobile phone, some persons came from behind, snatched the mobile phone, slapped the complainant, and ran away towards Station Road. The complainant tried to chase them but

could not apprehend them. A complaint was filed, investigation commenced, and the accused persons were arrested on the same night. The stolen mobile phone was recovered, and it was allegedly shown to the accused. The complainant later identified the accused, who were shown as arrested. Initially, the present applicant was released on bail.

3. However, on 1st August 2023, the prosecution filed an application for cancellation of bail and also prayed for addition of Sections 3(1)(ii), 3(2), and 3(4) of the MCOC Act. The learned Magistrate rejected this application on 7th August 2023. Thereafter, the prosecution preferred a Revision Application, which was allowed by the Sessions Court on 18th October 2023, and the applicant was re-arrested on 13th November 2023.

4. Learned Advocate appearing on behalf of the applicant has raised several contentions. She submitted that the Sanctioning Authority, while granting sanction under Section 23 of the MCOC Act, has not properly examined whether the essential requirements for invoking the MCOC Act were satisfied. She pointed out that the applicant was earlier granted bail in a case under Section 392 of IPC, which forms the basis for the invocation of MCOC Act. She contended that only three common offences are shown along with co-accused, which attract a punishment of more than three years, and that too are of a petty nature. A plain reading of the FIR, according to her, does not disclose the ingredients of Section 392 IPC. She further contended that chain snatching is not covered under Section 392 IPC, unlike the newly introduced provision under the Bharatiya Nyaya Sanhita, 2023.

5. She also submitted that the permission granted by the Sessions Court to arrest the applicant, after invocation of the MCOC Act, is unsupported by reasons, and hence, legally unsustainable. Relying upon Section 21(5) of the MCOC Act, she submitted that the words "or under any other act" in Section 21(5) are held unconstitutional, and therefore, the said provision is not applicable in the present case. She also relied on Section 21(7) of the Act and submitted that reasons must be recorded for the arrest of an accused who is already released on bail, which has not been done in the present case. According to her, the Sessions Court has mechanically permitted the arrest of the applicant, without assigning valid reasons, even though he was on bail.

6. Learned Advocate for the applicant further relied upon the order passed by a coordinate Bench of this Court in Criminal Bail Application No.165 of 2017, wherein the Sessions Court's order was set aside on the ground that the Investigating Agency had failed to place on record any material to justify the necessity of custodial interrogation, and that mere invocation of MCOC Act provisions was not sufficient to cancel bail.

7. She also placed reliance on another order passed by a coordinate Bench of this Court in Criminal Bail Application No.1905 of 2023, wherein it was observed that though MCOC Act was invoked, all the alleged offences pertained to chain

snatching, and hence, prima facie, the rigours of Section 21(4) of the MCOC Act would not apply. She further submitted that a Test Identification Parade (TIP) was conducted nearly six months later, in which the applicant was not identified, thereby weakening the prosecution's case. On all these grounds, the learned Advocate submitted that the applicant deserves to be released on bail.

8. On the other hand, the learned Additional Public Prosecutor (APP) opposed the bail application and submitted that the applicant is a habitual offender, having been involved in at least nine similar cases registered under Section 392 of the Indian Penal Code, which pertains to robbery. It is submitted that the applicant, in connivance with co-accused persons, is actively operating a criminal syndicate, and is indulging in organized robbery. The applicant is alleged to be the gang leader of such syndicate. In four of the registered offences, it is revealed that the applicant has committed the offence jointly with the same co-accused.

9. It is further submitted that in view of their criminal activities, both the applicant and his co-accused were externed under Section 55 of the Bombay Police Act by the competent authority i.e., the Deputy Commissioner of Police. The statements of prosecution witnesses, recorded during the course of investigation, indicate that the applicant has robbed one of the witnesses of his motorcycle, and that he is also regularly involved in snatching mobile phones from people on the street.

10. The learned APP has also contended that in cases where provisions of the MCOC Act are subsequently invoked, it is not necessary for the prosecution to seek cancellation of bail granted in the earlier offence. What the law requires is permission from the Court to arrest the accused under the MCOC Act, and the same was duly obtained from the Sessions Court. The prosecution, in accordance with this settled legal position, moved an application before the Sessions Court, and the Sessions Court, after due consideration, granted permission to arrest the applicant.

11. It was further submitted that such an order granting permission to arrest, which has been passed by the Sessions Court in exercise of its statutory jurisdiction, cannot be challenged indirectly in these bail proceedings under Section 439 of the Criminal Procedure Code. If the applicant wishes to question the legality or correctness of the order granting permission to arrest, he is required to initiate separate proceedings invoking the jurisdiction of judicial review before a competent court. Therefore, such contentions cannot be considered in the present bail application.

12. The learned APP also relied upon the judgment of a coordinate Bench of this Court in the case of *Sarang Arvind Goswami v. State of Maharashtra*, 2005 (3) Mh.L.J. 774. It was submitted that, in a situation where an accused is initially granted bail in connection with offences under the Indian Penal Code, but later the provisions of the MCOC Act are attracted, the applicant is required to be taken into custody in relation to the fresh offence registered under the MCOC

Act. Thereafter, the applicant can only seek bail in accordance with the stricter conditions prescribed under the special enactment, namely, the MCOC Act.

13. It is further contended that the applicant was already granted bail in an earlier case of similar nature, and during the subsistence of such bail, the applicant has again committed a similar offence, thereby violating the conditions of the earlier bail. In such a situation, Section 21(5) of the MCOC Act prohibits the grant of regular bail to such an accused. Moreover, it was submitted that Section 21(4) of the MCOC Act lays down stringent requirements which the applicant has failed to satisfy, and therefore, the applicant is not entitled to be released on bail under the provisions of the MCOC Act.

14. Although it is true that in the Test Identification Parade (TIP) conducted by the police, the witnesses failed to identify the applicant, the learned APP submitted that this alone is not sufficient to weaken the case of the prosecution, particularly in view of the serious criminal antecedents of the applicant and the manner in which the offence was committed. In light of the above, the learned APP prayed for rejection of the bail application.

15. I have carefully considered the submissions advanced by the learned Advocate for the applicant as well as the learned Additional Public Prosecutor for the State. I have also perused the material placed on record, including the FIR, the statements of witnesses, the earlier bail orders, and the order passed by the learned Sessions Judge granting permission to arrest the applicant under the provisions of the MCOC Act.

16. It is not in dispute that the applicant was earlier released on bail in connection with the offence registered under Section 392 of the Indian Penal Code, which pertains to robbery. The said bail was granted prior to the invocation of the provisions of the MCOC Act. It is also not in dispute that thereafter, based on additional material collected during investigation, the Investigating Officer sought sanction to apply the MCOC Act. The sanction was accordingly granted, and the learned Sessions Judge permitted the arrest of the applicant under the said special law.

17. The learned Advocate for the applicant has raised various legal objections concerning the validity of the sanction granted under Section 23 of the MCOC Act, as well as the legality of the order passed by the Sessions Court granting permission to arrest the applicant after invocation of MCOC provisions. According to the applicant, the sanctioning authority did not properly consider the requirements under the Act, and the Sessions Court mechanically granted arrest permission without assigning adequate reasons.

18. However, in the considered view of this Court, such objections cannot be gone into in the present proceedings under Section 439 of the Code of Criminal Procedure, which are limited to the question of bail. It is an established principle of law that once the prosecution has followed the due process as required under Section 23 of the MCOC Act, obtained a sanction from the competent authority,

and thereafter obtained permission to arrest from the jurisdictional Sessions Court, the bail court cannot sit in appeal over those orders in the course of deciding a bail application.

19. Whether the sanctioning authority properly applied its mind or not, or whether the Sessions Court committed any error in granting permission to arrest, are matters which fall within the scope of judicial review and not within the limited jurisdiction of this Court under Section 439 Cr.P.C. In other words, this Court, while exercising powers to decide a bail application, cannot be expected to conduct a mini-trial or a roving inquiry into the correctness or legality of administrative or judicial orders passed under the MCOC framework.

20. If the applicant is genuinely aggrieved by either the sanction order or the permission granted by the Sessions Court, it is always open to him to pursue appropriate legal remedies before a competent forum, including by way of a petition under Article 226 or 227 of the Constitution of India, where the Court can examine the legality, procedural compliance, and the application of mind by the authorities concerned. But such an examination is outside the purview of the present proceedings, which are confined solely to the question of whether bail should be granted or not.

21. Accordingly, the challenge to the validity of sanction or the permission to arrest does not assist the applicant in securing relief in the present case.

22. In the present case, the Investigating Officer has specifically alleged that the applicant is not merely a participant in the alleged criminal acts but is, in fact, the leader of a gang that is systematically involved in the commission of offences of mobile snatching and robbery. The prosecution has relied upon statements of multiple witnesses, which have been recorded during the course of investigation, wherein the applicant has been named as the person who not only snatched mobile phones from passers-by, but on one occasion, forcefully robbed a motorcycle from a witness.

23. These allegations, when examined in isolation, may appear to be individual offences of theft or robbery. However, when viewed in totality, they reveal a pattern of repeated and similar criminal conduct, allegedly committed by the applicant in association with other co-accused. The material collected during investigation prima facie indicates that the applicant and his associates were acting together, following a method or plan in targeting victims, and committing such offences in a manner that shows continuity, coordination, and purpose. These are not random or unconnected incidents, but appear to be part of a continuing unlawful activity.

24. As per Section 2(1)(d) of the Maharashtra Control of Organised Crime Act, 1999, the term "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, and which is undertaken either singly or jointly as a member of an organized crime syndicate, and in respect of which more than one charge-sheet

has been filed in the past ten years, and such cases are pending before the court. Further, Section 2(1)(e) defines "organised crime" as any continuing unlawful activity by an individual, singly or jointly, as a member of a syndicate, by use of violence or threat or intimidation, with the objective of gaining pecuniary benefit or other undue economic or other advantage.

25. The material placed on record by the prosecution, including multiple FIRs of similar nature, the commonality of co-accused in several cases, and the conduct of the applicant as described by witnesses, satisfies, at least at this prima facie stage, the essential ingredients required under Sections 2(1)(d) and 2(1)(e) of the MCOC Act. There is sufficient material to show that the applicant is allegedly part of a syndicate, that there is continuity of criminal acts, and that the alleged offences are cognizable and serious in nature, involving robbery and snatching, which attract punishment of more than three years.

26. In this backdrop, the contention of the applicant that the invocation of the MCOC Act is not justified cannot be accepted at this stage, particularly when the material demonstrates a structured and continuing course of criminal behaviour. Whether or not the applicant will ultimately be found guilty is a matter for trial. However, for the purpose of deciding the present bail application, the threshold for applying the MCOC Act appears to be satisfied. The law requires the Court to look for a prima facie case, and in this case, the material presently available meets that standard.

27. It is no doubt true that during the Test Identification Parade (TIP) conducted by the Investigating Officer, the complainant could not identify the applicant. Ordinarily, non-identification in a TIP may weaken the prosecution's case to some extent, particularly in cases where the identity of the accused is in serious doubt. However, as rightly pointed out by the learned Additional Public Prosecutor, the failure of the TIP is only one piece of the evidentiary puzzle, and cannot be treated as decisive, especially at the stage of considering a bail application under a special statute like the MCOC Act.

28. It must be borne in mind that TIP is only a corroborative tool, and not substantive evidence by itself. Moreover, in the present case, the prosecution is not resting its case solely on the identification made in the TIP. The prosecution has placed on record multiple FIRs registered against the applicant, all alleging similar types of offences, particularly involving snatching of mobile phones and robbery in public spaces. The modus operandi adopted in each case appears to be similar in nature, indicating a repeated pattern of criminal behaviour. Such consistency in the method of committing the offence is a relevant factor that supports the prosecution's case that the applicant is part of an organized group committing such acts systematically.

29. Furthermore, the recovery of stolen property, allegedly at the instance of the applicant, lends additional support to the prosecution version. Even if the recovery alone may not conclusively establish the guilt of the applicant, it cannot

be brushed aside at the stage of bail, particularly when considered along with other surrounding circumstances. The externment order passed under Section 55 of the Bombay Police Act and the role attributed to the applicant as a gang leader, based on statements of witnesses, provide external evidence of organized criminal conduct.

30. It is well-settled that while deciding a bail application under the MCOC Act, the Court must look at the entire material on record cumulatively, and not evaluate any one circumstance in isolation. The object of the MCOC Act is to curb the menace of organized and habitual criminal syndicates, and the threshold for granting bail under Section 21(4) is intentionally stringent. At this stage, the Court is required to form a prima facie view of the applicant's involvement in the organized crime syndicate, and whether there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence and is not likely to commit any offence if released on bail.

31. In the present case, despite the TIP not yielding identification of the applicant, the cumulative weight of the evidence, including the number of similar offences, pattern of commission, witness statements, property recovery, and previous conduct of the applicant, supports a prima facie view that the prosecution has made out a case attracting the provisions of the MCOC Act. Hence, the argument based on TIP failure, by itself, does not dilute the gravity of the allegations or justify the grant of bail at this stage.

32. It is a settled position in law that once the provisions of the MCOC Act are invoked, the Court is duty-bound to consider the bail application strictly in accordance with Section 21(4) of the said Act. This provision lays down a higher threshold for the grant of bail than what is ordinarily applicable under the Code of Criminal Procedure. The law under Section 21(4) of the MCOC Act clearly provides that bail shall not be granted unless the Court is satisfied on two key aspects: (i) 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.

33. These conditions are cumulative in nature, meaning both must be fulfilled before bail can be granted. The object behind such a strict standard is to prevent persons involved in organised criminal syndicates from easily securing bail and continuing their unlawful activities, thereby defeating the very purpose of the special law. The legislature has consciously placed this higher burden on the accused in cases involving organised crime, in the interest of public safety and law and order.

34. In the present case, as discussed earlier, the prosecution has placed on record material which prima facie shows the applicant's involvement in multiple offences of a similar nature, committed allegedly in association with other accused. The pattern of offences, the repeated use of similar methods, the statements of witnesses, and the recovery of stolen property, collectively indicate

the existence of a criminal syndicate and the active role of the applicant therein.

35. The Court is required at this stage to form a tentative opinion on whether there are reasonable grounds to believe that the applicant is not guilty. This is not a detailed inquiry into the evidence as is done during trial, but even on a prima facie consideration of the material, the Court must be convinced that the case is so weak or inherently improbable that the accused is unlikely to be found guilty. However, in the present matter, having regard to the volume and nature of material collected, such a finding cannot be safely recorded at this stage.

36. Similarly, there is no assurance or material before the Court to suggest that if the applicant is released on bail, he will not re-engage in similar offences. In fact, the past conduct of the applicant, including his alleged involvement in multiple prior cases, supports the prosecution's apprehension that he may again indulge in criminal acts. Thus, the second requirement under Section 21(4), namely that the accused is not likely to commit any offence while on bail, also remains unsatisfied.

37. In such circumstances, where both conditions under Section 21(4) of the MCOC Act are not fulfilled, this Court is legally barred from granting bail to the applicant, irrespective of any other mitigating factors. The discretion of the Court under Section 439 Cr.P.C. must yield to the stricter statutory mandate under the MCOC Act.

38. The submission made on behalf of the applicant that he was already granted bail in the earlier case and, therefore, ought not to have been re-arrested, does not carry much weight in the present factual and legal context. It is important to note that the present arrest is not in continuation of the earlier offence alone, but is in connection with a fresh and distinct offence registered under the provisions of the MCOC Act, which carries its own legal consequences.

39. The earlier bail granted to the applicant was in a regular case registered under the Indian Penal Code (IPC), primarily under Section 392, for robbery. However, after fresh material was collected by the Investigating Officer indicating a pattern of repeated, organised, and continuing unlawful activity, the provisions of the MCOC Act were invoked by following due procedure, including obtaining the necessary sanction under Section 23 of the Act. The invocation of the MCOC Act transforms the nature of the case from one of an individual offence to that of organised crime, which is a graver category under a special enactment designed to combat habitual and syndicated criminal activity.

40. As rightly submitted by the learned APP, and as held by this Court in the case of Sarang Arvind Goswami (Supra), when MCOC provisions are subsequently applied in respect of the same set of facts or persons, the Investigating Agency is well within its right to seek fresh custody, even if the accused was earlier released on bail in the IPC offence. The ratio of that decision makes it clear that the earlier bail order does not extend to or shield the accused from arrest in the MCOC case, which stands on a different legal footing.

41. Furthermore, once the MCOC Act is attracted, the accused must apply for bail under the rigorous standards laid down under Section 21(4) of the Act. The applicant cannot rely upon the liberal parameters under Section 439 of Cr.P.C., which would otherwise apply in cases not covered by special statutes. The two-stage test under Section 21(4), that there must be reasonable grounds to believe that the accused is not guilty, and also that he is not likely to commit any offence if released on bail, must be satisfied independently, and both conditions have to be established cumulatively before bail can be considered.

42. In the facts of the present case, the applicant has failed to discharge this heavier burden. The very fact that the applicant is alleged to have committed multiple offences of a similar nature while he was on bail in earlier cases shows a prima facie likelihood of recidivism, which defeats the argument that bail in the earlier IPC case ought to have protected him from arrest in the present offence under the MCOC Act.

43. The learned APP has also pressed into service the bar contained in Section 21(5) of the MCOC Act, contending that the applicant, having already been released on bail in an earlier offence punishable under the Indian Penal Code, has committed another offence of a similar nature while on bail, thereby attracting the disqualification under the said provision. Section 21(5) specifically provides that where an accused is released on bail and is subsequently arrested on accusation of having committed an offence under the MCOC Act, he shall not be released on bail, unless the Court is satisfied that there are exceptional circumstances to justify such release.

44. The object of Section 21(5) is to ensure that persons who continue to indulge in criminal activities even after being granted bail in earlier cases are not lightly released again, particularly when such offences disclose the ingredients of organised crime or continuing unlawful activity. In the present case, it is alleged that the applicant, despite being released on bail in the previous offence under Section 392 IPC, has again committed similar offences of mobile snatching and robbery. The material placed on record shows that four such offences were committed along with the same co-accused, and that the pattern of offending conduct has continued, thereby indicating the absence of deterrence and a tendency to re-offend.

45. Thus, even apart from the rigors of Section 21(4) of the Act, which the applicant has failed to satisfy, the additional statutory embargo under Section 21(5) squarely applies in the present case. There is no exceptional circumstance shown on record to justify departure from this provision. On the contrary, the applicant's past conduct, the number of similar cases registered against him, and the nature of allegations all militate against grant of bail. The legislative intent behind enacting Section 21(5) was to create a strict presumption against repeat offenders, which the Court cannot overlook.

46. Therefore, in view of the applicant's prior bail in a similar case, his

subsequent involvement in fresh offences of the same nature, and the invocation of MCOC provisions supported by prima facie material, this Court is of the clear opinion that Section 21(5) of the MCOC Act is fully attracted, and thus, the applicant is statutorily disentitled to be released on bail.

47. The prosecution has further alleged that both the applicant and the co-accused were externed by the competent authority under Section 55 of the Bombay Police Act, for a period of two years with effect from 16.06.2022, thereby restraining them from entering or remaining within certain notified areas. It is the prosecution's case that the present offence was committed during the subsistence of the externment order, and hence, the act of the applicant amounts to not only commission of an offence under the Indian Penal Code but also a wilful breach of a preventive order passed by a statutory authority.

48. The allegation of violation of externment is of considerable significance in the context of bail under the MCOC Act. The purpose of externment under Section 55 is to protect public order and safety by restraining habitual offenders from operating within sensitive or vulnerable localities. If a person, despite being externed, chooses to re-enter the area and commit the very same kind of offence, it indicates a blatant disregard for the law and a conscious defiance of preventive action. Such conduct goes to the root of the prosecution's allegation that the applicant is a habitual offender who continues to engage in organised criminal activity without fear of legal consequences.

49. From a legal standpoint, the breach of an externment order not only constitutes a separate offence under the Bombay Police Act, but also lends corroborative support to the prosecution's claim that the applicant is part of a criminal syndicate, and that the present act is not an isolated incident but part of a pattern of continuing unlawful activity, as defined under Section 2(1)(d) of the MCOC Act. It further strengthens the case for invoking the presumption under Section 21(5), that the applicant, having already been granted bail earlier, has not only reoffended but done so in breach of lawful preventive measures.

50. Thus, the fact that the present offence is alleged to have been committed during the period of valid externment severely affects the applicant's claim for bail. It demonstrates a lack of respect for the authority of law, and confirms the prosecution's apprehension that if released again, the applicant is likely to revert to similar criminal conduct, thereby affecting public peace and order.

51. Upon considering the overall material placed on record, the nature and gravity of the allegations, the pattern of repeated offences under Section 392 IPC allegedly committed by the applicant and co-accused in an organised manner, the role attributed to the applicant as the leader of a gang, and the invocation of the provisions of the MCOC Act supported by sanction under Section 23, this Court is of the opinion that the applicant is not entitled to be released on bail at this stage.

52. The material on record prima facie discloses continuing unlawful activity

committed by the applicant in association with others, satisfying the ingredients of Sections 2(1)(d) and 2(1)(e) of the MCOC Act. The Test Identification Parade (TIP) may not have resulted in identification, but the cumulative circumstances, including multiple FIRs, similarity in modus operandi, recovery of stolen property, externment order, and reoffending while on bail, provide strong prima facie support to the prosecution's case.

53. This Court is not satisfied that the applicant has made out a case to invoke the limited exception available under Section 21(4) of the MCOC Act. Additionally, the applicant is hit by the statutory bar under Section 21(5), having committed a similar offence while on bail and during the period of externment under Section 55 of the Bombay Police Act, thereby demonstrating habitual and deliberate criminal conduct.

54. In view of the above discussion and findings, the present bail application is rejected.

55. It is clarified that the observations made in this order are prima facie and confined only to the decision on bail. The Trial Court shall decide the case on its own merits, without being influenced by these observations.

56. The bail application is disposed of.