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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 3002 of 2025
Reserved on: 16.01.2026
Date of Decision: 23.01.2026.

Aman Rana ....Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Vacation Judge.
Whether approved for reporting?[1] No.

For the Petitioner(s) : Mr Kapil Sharma, Advocate.
For the Respondent/State: Mr Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Vacation Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 40 of 2025, dated 16.4.2025, registered at Police Station, Gagret, District Una, H.P. for the commission of offences punishable under Sections 126(2), 308(4), 324(5), 351(2), 352, 62, 111(2)(B) read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 (BNS).

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2. It has been asserted that, as per the prosecution, Kanwar Sandeep Singh, Proprietor of Thakur Stone Crusher, Guglehar, filed a complaint asserting that Amrish Rana, Amit Mankotia and two other persons came to the spot on 15.4.2025 at about 10.00 PM in their vehicles bearing Registration No. HP-67-9251 and HP-72D-0695. They stopped JCB Driver Shiv Kumar and Tipper Driver Sanjay Rana, who were loading goods on the bank of the river Swan. They threatened the JCB Driver and the tipper driver to take away their vehicles from the spot. Amrish Rana had a darat in his hand, and he threatened to kill the drivers with it. The drivers took their vehicles away from the spot. Amrish Rana and his companions put some substance in the engines of the vehicle and deflated their tyres. Driver Shiv Kumar and Sanjay Rana narrated the incident to informant Sandeep Singh, who reported the matter to the police. The police registered the FIR and investigated the matter. The petitioner is innocent, and he was falsely implicated. The police have filed the charge sheet before the Court, and no fruitful purpose would be served by detaining the petitioner in custody. The petitioner would abide by the terms and conditions that the Court may

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impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the informant, Kanwar Sandeep Singh, made a complaint to the police stating that he had established Thakur Store Crusher Guglehar about 03 years before the incident. He had employed the drivers to drive the vehicles and the JCB. Amrish Rana visited the Swan River on 12.04.2025 with his friends and threatened the drivers. He again visited the spot on 15.04.2025 at 10:00 pm with Amit Mankotia in the vehicles bearing registration Nos. HP67-9251 and HP72D-0695. They threatened Shiv Kumar, the driver of the JCB and Sanjay Rana, the driver of the tipper. Amrish Rana had a "darat", and he threatened to kill the drivers on failure to accompany him. The drivers drove the vehicles to the Swan River. Amrish Rana and his friends put something into the engine and deflated the tyres of the tipper. Amrish Rana had already threatened the informant and Rohit Kumar to face dire consequences on failure to pay money to him. Police registered the FIR and investigated the matter. It was found after the investigation that the accused had threatened the informant Kanwar Sandeep Singh and Rohit

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Kumar, owner of Sai Stone Crusher, for ransom. Hence, the offence punishable under Section 111(2) of the BNS was added. Amrish Rana and Amit Mankotia produced the vehicles bearing registration No. HP-72D-0695 and HP-67-9251, along with documents and the keys, which were seized by the police. Amrish Rana did not produce his mobile phone or darat, which was used during the incident. Amit Mankotia produced his mobile phone, which was analyzed and it was found that it was used for calling someone virtually. The petitioner was acquitted in FIR No. 185/2014, 216/15, and 220/15, and FIR No.37/25 is still pending against him. The informant stated during the investigation that Amrish Rana, Amit Mankotia and two other persons had threatened him on 15.4.2025. Amrish Rana, Amit Mankotia and Aman Rana named Jagpal as their accomplice. Jagpal produced a bail order passed by the Hon'ble Supreme Court of India, and he was released on bail in terms of the order. The charge sheet was filed before the learned Additional Chief Judicial Magistrate, Amb, on 26.08.2025. As per the result of the analysis, hydrocarbons were detected in the contents of the parcel sent for analysis. The result of the analysis of the mobile phone is awaited. The petitioner would indulge in the commission of a

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similar offence in case of his release on bail. Hence, the status report.

4. I have heard Mr Kapil Sharma, learned counsel for the petitioner Aman Rana and Mr Prashant Sen, learned Deputy Advocate General for the respondent-State.

5. Mr Kapil Sharma, learned counsel for the petitioner Aman Rana, submitted that the petitioner is innocent and he was falsely implicated. The offence punishable under Section 111 of the BNS is not made out against the petitioner because no FIR was registered against him or any other person in the preceding ten years, which is a requirement of Section 111 of the BNS. The police have filed the charge sheet before the Court, and the custody of the petitioner is not required for the investigation. No fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Prashant Sen, learned Deputy Advocate General for the respondent/State, submitted that the petitioner had threatened the informant on the previous occasion for ransom. The petitioner was involved in the commission of similar

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offences earlier, and he would indulge in the commission of a similar offence in case of his release on bail. Hence, he prayed that the present petition be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> (*i*) *Broad principles for the grant of bail*
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)
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> > "7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.
> >
> > *8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.* [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]
> >
> > *9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or*

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otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge*." (emphasis supplied)

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58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

> "*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While placement of the accused in the society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, and the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*" (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors

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which ought to have guided the Court's decision to grant bail have also been detailed as under: (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*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;
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> (*vii*) *reasonable apprehension of the witnesses being influenced; and*
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> (*viii*) *danger, of course, of justice being thwarted by grant of bail.*" (emphasis supplied)
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> **xxxxxxx**

62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar,***

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(2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]), SCC p. 511, para 35)

> "*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

9. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

10. As per the prosecution, the petitioner and the co-accused, including Jagpal Singh Rana and Amit Mankotia, had intimidated the informant and other persons. The Hon'ble Supreme Court released Jagpal Singh Rana on pre-arrest bail in Criminal Appeal No.4609 of 2025 arising out of the SLP CRL No. (11389 of 2025) titled Jagpal Singh Vs. State of HP, decided on 27.10.2025. Learned Additional Sessions Judge-I, Una released Amit Mankotia in Bail Application No.293 of 2025, titled Amit

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Mankotia Vs. State of HP, decided on 8.9.2025. Petitioner had applied for bail before the learned Additional Sessions Judge-I, Una, but his application was dismissed on the ground that he had criminal antecedents. The offences alleged against them were grave, involving violence and risk to public peace. Therefore, he could not be released on bail.

11. The police have registered the FIR for the commission of offences punishable under Sections 126(2) (wrongful restraint), 308(4) (extortion), 324(5) (mischief), 351(2) (criminal intimidation), 352 (intentional insult), 62 (attempt to commit offence punishable with imprisonment) and 111 (organized crime). The FIR did not mention that Amrish Rana, Amit Mankotia or any other person had threatened the informant or any other person before the incident for ransom. A statement was made during the pendency of the investigation to this effect. Therefore, *prima facie*, it is doubtful that such an offence had been committed because had it been so, the matter would have been reported to the police at the earliest or at least while registering the present FIR.

12. The police have also added Section 111 of BNS. It reads as follows:

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"**111. Organised Crime.** "(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

Explanation. —For the purposes of this sub-section,—

(i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang, indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, 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, and includes economic offence;

(iii) "economic offence" includes criminal breach of trust, forgery, counterfeiting of currency notes, bank notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution organization for obtaining monetary benefits in any form.

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(2) Whoever commits organised crime shall—

(a) If such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to a fine which shall not be less than ten lakh rupees;

(b) In any other case, 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 a fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, 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 which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised 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 a fine which shall not be less than five lakh rupees.

(5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees: Provided that this sub-Section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life

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> and shall also be liable to fine which shall not be less than two lakh rupees.
>
> (7) If any person on behalf of a member of an organized crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than one lakh rupees".

13. A bare perusal of the section shows that a person should indulge in a specified activity either singly or jointly as a member of an organised crime syndicate in respect of which more than one charge sheet has been filed before a Court within the preceding period of ten years, and the Court has taken cognisance of such offence.

14. This section was explained by the Karnataka High Court in ***Avinash vs. State of Karnataka (11.03.2025 - KARHC): MANU/KA/0938/2025*** as under:

> 1. The primary intent behind introducing Section 111 of BNS, 2023, is to provide a targeted and effective mechanism to dismantle organised crime syndicates. From a reading of the said provision of law, it is manifest that for the purpose of invoking Section 111 of BNS, 2023, there are certain basic parameters, and if it is found that the accused comes within the said parameters, the offence punishable under Section 111 of BNS, 2023 can be invoked. The said parameters are as follows:

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> (a) the offences enlisted in the Section must have been committed;
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> (b) accused should be a member of an organised crime syndicate;
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> (c) he should have committed the crime as a member of an organised crime syndicate or on behalf of such a syndicate.
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> (d) he should have been chargesheeted more than once before a competent Court within the preceding period of ten years for a cognizable offence punishable with imprisonment for three years or more, and the Court before which the chargesheet has been filed should have taken cognisance of such offence, including an economic offence.
>
> (e) the crime must be committed by using violence, intimidation, threat, coercion or by any other unlawful means.

15. It was laid down by the Kerala High Court in ***Mohd. Hashim v. State of Kerala, 2024 SCC OnLine Ker 5260,*** where no charge sheet was filed against the accused in the preceding ten years, he cannot be held liable for the commission of an offence punishable under Section 111 of the BNS Act. It was observed:

> **"10.** Section 111 (1) explicitly stipulates that to attract the offence, there should be a continuing unlawful activity, by any person or group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate. The material ingredient to attract the above provision, so far as the present case is concerned, is that there should have been a continuing unlawful activity committed by a member of an organised crime syndicate or on behalf of such syndicate.

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11. Explanation (i) and (ii) of sub-section (1) of Section 111 of BNS define an organised crime syndicate and a continuing unlawful activity, respectively.

12. Continuing unlawful activity under explanation (ii) of Section 111(1) of the BNS means an activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, 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-sheet has to be filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such an offence. Furthermore, an organised crime syndicate under Explanation (i) of sub-section (1) of Section 111 of the BNS means a group of two or more persons who, acting either singly or jointly as a syndicate or gang, indulge in any continuing unlawful activity.

13. While interpreting the analogous provisions of the Maharashtra Control of Organised Crime Act, 1999, which mandates the existence of at least two charge sheets in respect of a specified offence in the preceding ten years, the Honourable Supreme Court in ***State of Maharashtra v. Shiva alias Shivaji Ramaji Sonawane [(2015) 14 SCC 272]*** has unequivocally held as follows:

> "9. It was in the above backdrop that the High Court held that once the respondents had been acquitted for the offence punishable under the IPC and Arms Act in Crimes No. 37 and 38 of 2001 and once the Trial Court had recorded an acquittal even for the offence punishable under Section 4 read with Section 25 of the Arms Act in MCOCA Crimes No. 1 and 2 of 2002 all that remained incriminating was the filing of charge sheets against the respondents in the past and taking of cognizance by the competent court over a period of ten years prior to the enforcement of the MCOCA. The filing of charge sheets or taking of the cognisance in the same did not, declared the High Court, by itself

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constitute an offence punishable under Section 3 of the MCOCA. That is because the involvement of respondents in previous offences was just about one requirement, but by no means the only requirement, which the prosecution has to satisfy to secure a conviction under MCOCA. *What was equally, if not more important, was the commission of an offence by the respondents that would constitute "continuing unlawful activity". So long as that requirement failed, as was the position in the instant case, there was no question of convicting the respondents under Section 3 of the MCOCA. That reasoning does not, in our opinion, suffer from any infirmity.*

10. The very fact that more than one charge sheet had been filed against the respondents, alleging offences punishable with more than three years' imprisonment, is not enough. *As rightly pointed out by the High Court, commission of offences before the enactment of MCOCA does not constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognisance by the competent court in relation to the offence alleged to have been committed by the respondents in the past is but one of the requirements for invocation of Section 3 of the MCOCA. Continuation of unlawful activities is the second and equally important requirement that ought to be satisfied. Only if an organised crime is committed by the accused after the promulgation of MCOCA, he may, seen in the light of the previous charge sheets and the cognisance taken by the competent court, be said to have committed an offence under Section 3* of the Act.

11. In the case at hand, the offences which the respondents are alleged to have committed after the promulgation of MCOCA were not proved against them. The acquittal of the respondents in Crimes Nos. 37 and 38 of 2001 signified that they were not involved in the commission of the offences with which they were charged. Not only were the respondents were acquitted of the charge under the Arms Act, but they were also

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acquitted in Crimes Case Nos. 1 and 2 of 2002. No appeal against that acquittal had been filed by the State. This implied that the prosecution had failed to prove the second ingredient required for completion of an offence under MCOCA. *The High Court was, therefore, right in holding that Section 3 of the MCOCA could not be invoked only on the basis of the previous charge sheets for Section 3 would come into play only if the respondents were proved to have committed an offence for gain or any pecuniary benefit or undue economic or other advantage after the promulgation of MCOCA.* Such being the case, the High Court was, in our opinion, justified in allowing the appeal and setting aside the order passed by the Trial Court".

14. Subsequently, the Honourable Supreme Court in ***State of Gujarat v. Sandip Omprakash Gupta [2022 SCC OnLine SC 1727]***, while interpreting the analogous provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015, clarified the ratio in ***Shivaji alias Shivaji Ramaji Sonawane*** (supra) by observing thus:

"52. It is a sound rule of construction that the substantive law should be construed strictly so as to give effect and protection to the substantive rights unless the statute otherwise intends. Strict construction is one that limits the application of the statute by the words used. According to Sutherland, 'strict construction refuses to extend the import of words used in a statute so as to embrace cases or acts which the words do not clearly describe'.

53. The rule as stated by Mahajan C.J. in ***Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961: AIR 1954 SC 496***, is that "if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes a penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the

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legislature." In ***State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368***, this Court held that it is a settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. The basic rule of strict construction of a penal statute is that a person cannot be penalised without a clear reading of the law. Presumptions or assumptions have no role in the interpretation of penal statutes. They are to be construed strictly in accordance with the provisions of law. Nothing can be implied. In such cases, the courts are not so much concerned with what might possibly have been intended. Instead, they are concerned with what has actually been said.

54. *We are of the view and the same would be in tune with the dictum as laid in* ***Shiva alias Shivaji Ramaji Sonawane*** *(supra) that there would have to be some act or omission which amounts to organised crime after the 2015 Act came into force i.e., 01.12.2019 in respect of which, the accused is sought to be tried for the first time in the special court.*

55. We are in agreement with the view taken by the High Court of Judicature at Bombay in the case of *Jaisingh* (supra) that neither the definition of the term 'organised crime' nor of the term 'continuing unlawful activity' nor any other provision therein declares any activity performed prior to the enactment of the MCOCA to be an offence under the 1999 Act nor the provision relating to punishment relates to any offence prior to the date of enforcement of the 1999 Act, i.e., 24.02.1999. *However, by referring to the expression 'preceding period of ten years' in Section 2(1)(d), which is a definition clause of the term 'continuing unlawful activity' inference is sought to be drawn that in fact, it takes into its ambit the acts done prior to the enforcement of the 1999 Act as being an offence under the 1999 Act. The same analogy will apply to the 2015 Act.*

56. There is a vast difference between the act or activity, which is being termed or called an offence

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under a statute and such act or activity being taken into consideration as one of the requisites for taking action under the statute. For the purpose of organised crime, there has to be a continuing unlawful activity. There cannot be continuing unlawful activity unless at least two charge sheets are found to have been lodged in relation to the offence punishable with three years' imprisonment during the period of ten years. Indisputably, the period of ten years may relate to the period prior to 01.12.2019 or thereafter. In other words, it provides that the activities, which were offences under the law in force at the relevant time and in respect of which two charge sheets have been filed and the Court has taken cognisance thereof, during the period of the preceding ten years, then it will be considered as continuing unlawful activity on 01.12.2019 or thereafter. It nowhere by itself declares any activity to be an offence under the said 2015 Act prior to 01.12.2019. It also does not convert any activity done prior to 01.12.2019 to be an offence under the said 2015 Act. It merely considers two charge sheets in relation to the acts which were already declared as offences under the law in force to be one of the requisites for the purpose of identifying continuing unlawful activity and/or for the purpose of an action under the said 2015 Act.

57. If the decision of the coordinate Bench of this Court in the case of ***Shiva alias Shivaji Ramaji Sonawane*** (supra) is looked into closely along with other provisions of the Act, the same would indicate that the offence of ‘organised crime’ could be said to have been constituted by at least one instance of continuation, apart from continuing unlawful activity evidenced by more than one chargesheets in the preceding ten years. We say so, keeping in mind the following:

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(a) If 'organised crime' was synonymous with 'continuing unlawful activity', two separate definitions were not necessary.

(b) The definitions themselves indicate that the ingredients of the use of violence in such activity with the objective of gaining pecuniary benefit are not included in the definition of 'continuing unlawful activity', but find place only in the definition of 'organised crime'.

(c) What is made punishable under Section 3 is 'organised crime' and not 'continuing unlawful activity'.

(d) If 'organised crime' were to refer to only more than one chargesheets filed, the classification of crime in Section 3(1)(i) and 3(1)(ii) resply on the basis of consequence of resulting in death or otherwise would have been phrased differently, namely, by providing that 'if any one of such offence has resulted in the death', since continuing unlawful activity requires more than one offence. Reference to 'such offence' in Section 3(1) implies a specific act or omission.

(e) As held by this Court in ***State of Maharashtra*** **v.** ***Bharat Shanti Lal Shah*** (supra) continuing unlawful activity evidenced by more than one chargesheets is one of the ingredients of the offence of organised crime and the purpose thereof is to see the antecedents and not to convict, without proof of other facts which constitute the ingredients of Section 2(1)(e) and Section 3, which respectively define commission of offence of organised crime and prescribe punishment.

(f) There would have to be some act or omission which amounts to organised crime after the Act came into force, in respect of which the accused

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is sought to be tried for the first time, in the Special Court (i.e. has not been or is not being tried elsewhere).

(g) *However, we need to clarify something important. Shiva alias Shivaji Ramaji Sonawane (supra) dealt with the situation where a person commits no unlawful activity after the invocation of the MCOCA. In such circumstances, the person cannot be arrested under the said Act on account of the offences committed by him before the coming into force of the said Act, even if he is found guilty of the same. However, if the person continues with the unlawful activities and is arrested, after the promulgation of the said Act, then such a person can be tried for the offence under the said Act. If a person ceases to indulge in any unlawful act after the said Act, then he is absolved of the prosecution under the said Act. But, if he continues with the unlawful activity, it cannot be said that the State has to wait till he commits two acts of which cognisance is taken by the Court after coming into force. The same principle would apply, even in the case of the 2015 Act, with which we are concerned.*

58. In the overall view of the matter, we are convinced that the dictum as laid by this Court in ***Shiva alias Shivaji Ramaji Sonawane***(supra) does not require any relook. The dictum in ***Shiva alias Shivaji Ramaji Sonawane*** (supra) is the correct exposition of law".

16. Section 111 (1) of the BNS in respect of organised crime is, in essence, analogous to the provisions of the Maharashtra Control of Organised Control Act and the Gujarat Control of Terrorism and Organised Crime Act. The legal principles laid down by the Honourable Supreme Court in its interpretation of organised crime as defined by the above two state legislations are applicable on all fours to Section 111 (1) of the BNS. Thus, it is not necessary to have a further interpretation of the above analogous provision.

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> **17.** In view of the above discussion, to attract an offence under Section 111 (1) of the BNS it is imperative that a group of two or more persons indulge in any continuing unlawful activity prohibited by law, which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, 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-sheet has to be filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such an offence.
>
> **18.** In the present case, it is undisputed that no charge sheet has been filed against the petitioner in any court in the last ten years. Therefore, prima facie, the offence under Section 111(1) is not attracted. Nevertheless, these are matters to be investigated and ultimately decided after trial. Additionally, the petitioner has been in judicial custody for the last 57 days, and recovery has been effected.

16. This judgment was followed in ***Pesala Sivashankar Reddy v. State of A.P., 2024 SCC OnLine AP 5422,*** wherein it was held:

> "**8.** The Hon'ble Supreme Court in the matter of ***State of Maharashtra*** **v.** ***Shiva Alias Shivaji Ramaji Sonawane 2015 SCC OnLine SC 648*** was dealing with the Maharashtra Control of Organised Crime Act, 1999 (MCOC) Act and the offence of organised crime under the said act. The Hon'ble Supreme Court has held that only if an organised crime is committed by the accused after the promulgation of the MCOCA Act, that he may be seen in the light of the previous charge sheet, which is taken cognisance by the competent court, would have committed an offence under Section 3 of the Act.
>
> **9.** The Hon'ble Supreme Court, in the matter of ***Mohamad Iliyas Mohamad Bilal Kapadiya v. State of Gujarat 2022 Live***

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> ***Law (SC) 538,*** held that to invoke the provisions of the Gujarat Control of terrorism and Organised Act Crime, 2015, in respect of an act of organised crime, more than one charge sheet should be filed in the preceding ten years. Section 111 of B.N.S. is analogous to the organised crime acts of various states, which were dealt with by the Hon'ble Supreme Court.
>
> **10.** The Hon'ble High Court of Kerala in the matter of ***Mohammed Hashim v. State of Kerala 2024 SCC OnLine Ker 5260.*** The learned Judge of the Kerala High Court has emphasised that Section 111 can be invoked only if more than one charge sheet has been filed for such offences in the preceding ten years before a competent court, and such charge sheets are taken cognisance of by the court.
>
> **11.** This Court agrees with the observations of the Kerala High Court, and admittedly, no charge sheet has been filed against the petitioner for similar offences in any court of law in the preceding ten years; as such, a cause for invocation of Section 111 of B.N.S. has to be dealt appropriately by the investigating officer during the course of investigation of the crime."

17. It was held in ***Suraj Singh vs. State of Punjab (25.09.2024 - PHHC): MANU/PH/4288/2024*** that the police must gather legally admissible evidence to connect the accused with the commission of a crime punishable under Section 111 of the BNS Act. It was observed:

> "15. To bring an offence into the four corners of an organised crime, the offence must fall under a category described in S. 111 of BNS, 2023. The prima facie evidence must be legally admissible to constitute any continuing unlawful activity to constitute an organised crime as defined in S. 111 BNS. Without legally admissible prima facie evidence, the State cannot make any suspect undergo

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> custodial interrogation to hunt for such evidence against the suspect or others. The evidence must be gathered first to make out a prima facie case within the scope of S. 111 of BNS, and such evidence alone would justify custodial interrogation to carry out further investigation. Without legally admissible accusations, allegations, or evidence, the State cannot arrest a suspect to fish evidence against them or use such a suspect as custodial bait by any hook, line, and sinker to bring the case into the fold of S. 111 of BNS. Prima facie evidence must be admissible, and if such evidence is deemed inadmissible, the entire foundation will collapse."

18. In the present case, the only allegation of the petitioner indulging in organised crime is based upon the fact that he and other co-accused had threatened the informant and another person for ransom, which, as stated above, is highly doubtful because of the absence of any such allegation in the FIR. The status report also does not show that the petitioner was part of a syndicate against which cognisance was taken in the preceding ten years. Therefore, the material on record does not *prima facie* connect the petitioner to the commission of a crime punishable under Section 111 of BNS.

19. The other offences alleged against the petitioner are not so serious as to justify his pre-trial detention. The police have already filed the charge sheet before the Court, and the petitioner's custody is not required for investigation.

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20. The police asserted that the petitioner would indulge in the commission of a similar offence and would intimidate the witnesses in case of release on bail. These apprehensions are without any basis and can be removed by imposing the conditions. Therefore, this apprehension is not sufficient to deny bail to the petitioner.

21. It was submitted that the petitioner has criminal antecedents and he should not be released on bail. The Learned Trial Court was also influenced by this consideration while denying bail. Mere criminal antecedents without the *prima facie* involvement of the petitioner in the commission of a heinous offence are not sufficient to deny bail to him. Since *prima facie* involvement of the petitioner in any heinous offence is not established in the present case. Therefore, the bail cannot be denied to the petitioner on the ground that he has criminal antecedents.

22. The police have not asserted that the petitioner had absented in the previous cases; rather the police reported that the petitioner was acquitted in some of the cases registered against him, which means that the petitioner had faced the trial,

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and there is no material to conclude at this stage that the petitioner would not attend the trial if released on bail.

23. In view of the above, the present petition is allowed, and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of ₹1,00,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following conditions:

(i) The petitioner will not intimidate the witnesses, nor will he influence any evidence in any manner whatsoever.

(ii) The petitioner shall attend the trial and will not seek unnecessary adjournments.

(iii) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the concerned Police Station and the Court.

(iv) The petitioner will furnish his mobile number and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

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24. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

25. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent of District Jail, Una at Bangarh, H.P., and the learned Trial Court by FASTER.

26. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the case's merits.

(Rakesh Kainthla)
Vacation Judge

23rd January, 2026
(Nikita)