IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY
ON 31st OF JULY, 2026
MISCELLANEOUS CRIMINAL CASE NO.32864/2026

TANMAY
VS.
STATE OF MADHYA PRADESH

Appearance:
Shri Ravinandan Dwivedi – Advocate for the applicant.

Shri Ravindra Rajpoot – Panel Lawyer for the respondent/State.

ORDER

This is the second application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS") seeking regular bail. The applicant is in judicial custody since 15.12.2025 in connection with Crime No.322/2025 for the offences punishable under Sections 109(1), 115(2), 111(1) and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (in short 'BNS") and Sections 25 and 27 of the Arms Act.

2. Applicant's first application for bail (M.Cr.C. No.10630/2026) was dismissed as withdrawn vide order dated 16.04.2026 by the Coordinate Bench of this Court.

3. Briefly stated, the prosecution case is that the complainant,

Sachin, lodged an FIR in the form of Dehati Nalishi on 22.11.2025 at about 2:00 p.m. at District Hospital, Burhanpur, alleging that on 20.11.2025 at about 1:30 p.m., while he along with his friend Vedant Bage had reached near Sagar Tower, Tempo Stand on a motorcycle, the present applicant along with co-accused Mujju @ Maya and Chetan intercepted them and started assaulting the complainant. It is further alleged that co-accused Chetan fired a shot from a country-made pistol, which hit the complainant on the left side of his abdomen, causing a firearm injury. The complainant was admitted to the hospital for treatment. On the basis of the aforesaid report, Crime No.322/2025 was registered for the offences punishable under Sections 109(1), 115(2) read with Section 3(5) of the BNS and Sections 25 and 27 of the Arms Act. Subsequently, pursuant to an order dated 02.12.2025 issued by the Superintendent of Police, Section 111 of the BNS was also added.

4. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the case. It is contended that the applicant had no role in the commission of the alleged offence. According to the prosecution story itself, the firearm injury was caused by co-accused Chetan, whereas the present applicant was not armed with any weapon. It is further submitted that after dismissal of the first bail application, the complainant Sachin has been examined as PW-1 on 18.06.2026. In his deposition, the complainant has not supported the prosecution case and has been declared hostile as stated nothing against the applicant. It is further argued that Section 111 of the BNS has been invoked without satisfying the statutory requirements contemplated thereunder. According to the applicant, the provision has been added merely on the basis of an office order issued by the Superintendent of Police without there being any material to *prima facie* establish the existence of the essential ingredients constituting the offence of organized

crime. It is also submitted that co-accused Chetan Chandan has already been enlarged on bail by this Court vide order dated 09.07.2026 passed in M.Cr.C. No.23737/2026. The applicant is in custody since 15.12.2025, the trial is likely to take considerable time and, therefore, he deserves to be enlarged on bail.

5. Per contra, learned counsel for the respondent/State opposed the application and submitted that the firearms used in the commission of the offence were procured from the present applicant, which *prima facie* connects him with the crime. It is also submitted that criminal antecedents of the applicant and co-accused persons show that they had committed more than one offence in preceding ten years and thus the provisions of Section 111 of BNS are attracted. It is further submitted that having regard to the serious nature of the allegations, the applicant does not deserve the benefit of bail.

6. Before adverting to the rival submissions and examining the correctness of the addition of Section 111 of the BNS in the present case, it would be apposite to examine the scheme and scope of the said provision. Section 111 of the BNS, introduced for the first time under the BNS w.e.f. 01.07.2024, defines the expression "organized crime" and prescribes punishment for different categories of the said offence. The provision further defines the expressions "organized crime syndicate" and "continuing unlawful activity", which constitute the foundation for attracting the offence of organized crime. Section 111 reads as under:-

> "**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 organised 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 organised 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 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 or organisation for obtaining monetary benefits in any form.

(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 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 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 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 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 organised 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."

7. A plain reading of Section 111(1) of the BNS makes it manifest that "organized crime" is not confined merely to the commission of a cognizable offence. The offence contemplates a continuing unlawful activity undertaken by a person or a group of persons, acting either singly or jointly, as members of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion or other unlawful means, with the object of obtaining direct or indirect material benefits including a financial benefit. The Explanation appended to Section 111 further clarifies that "continuing unlawful activity" means an activity prohibited by law, punishable with imprisonment of three years or more, in respect whereof more than one charge-sheets have been filed

before a competent Court within the preceding period of ten years and cognizance thereof has been taken. It also defines “organised crime syndicate” that a group or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity. Thus, the concept of "organized crime" under Section 111 is inseparably linked with the existence of a continuing unlawful activity and an organized crime syndicate as defined therein.

8. The concept of organized crime is not unknown to criminal jurisprudence. Similar provisions are incorporated under the Maharashtra Control of Organized Crime Act, 1999 (in short “MCOCA”) as well as the Gujarat Control of Terrorism and Organized Crime Act, 2015 (in short “GCTOCA”). The definitions of "organized crime", "organized crime syndicate" and "continuing unlawful activity" occurring in the aforesaid enactments are similar to those contained in Section 111 of the BNS and recognize that the offence of organized crime is founded upon the existence of a continuing unlawful activity committed by or on behalf of an organized crime syndicate. For ready reference the relevant portion of the MCOCA are as follows:-

> **2. Definitions**;- (1) In this Act, unless the context otherwise requires,- Definitions.
> (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a Competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;
> (e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of

> gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;
> (f)"organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime."

9. Similarly, the GCTOCA also defines the expressions "organized crime", "continuing unlawful activity" and "organized crime syndicate". The relevant provisions are reproduced hereunder:-

> "**2. Definitions**;- (1) In this act, unless the context otherwise requires,-
> (c) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment for a term of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;
> (e) "organised crime" means any continuing unlawful activity and terrorist act including extortion, land grabbing, contract killing, economic offences, cyber crimes having severe consequences, running large scale gambling rackets, human trafficking racket for prostitution or ransom by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means;
> (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulging in activities of organised crime."

10. Thus, it is clear that the provisions of Section 111 of BNS defining "organised crime" with terms "continuing unlawful activity" and "organised crime syndicate" are *pari materia* with the provisions of MCOCA and GCTOCA.

11. The Supreme Court while dealing with the provisions of MCOCA in the case of **State of Maharashtra v. Shiva alias Shivaji Ramji Sonawane and others, (2015) 14 SCC 272,** has held as under:-

> "**10.** The very fact that more than one charge sheets 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 prior to the enactment of MCOCA does not by itself constitute an offence under MCOCA. Registration of cases, filing of charge sheets and taking of cognizance 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. It is only if an organised crime is committed by the accused after the promulgation of MCOCA that he may, seen in the light of the previous charge-sheets and the cognizance taken by the competent court, be said to have committed an offence under Section 3 of the Act."

12. The Supreme Court had an occasion to deal with similar provisions of GCTOCA in the case of **State of Gujarat v. Sandip Omprakash Gupta, (2024) 14 SCC 401,** wherein the Apex Court has considered its earlier dictum laid down in **State of Maharashtra v. Shiva** (supra) and came to explain the scope of the expressions "organized crime", "organized crime syndicate" and "continuing unlawful activity". The relevant portion of the judgment in the case of **Sandip Omprakash Gupta** (supra) is reproduced hereinbelow:-

> "21. The Gujarat Control of Terrorism and Organised Crime Act, 2015, as its long title indicates, is "an Act to make special provisions for the prevention and control of terrorist acts and for coping with criminal activities by organised crime syndicates and for the matters connected therewith or incidental thereto". The Statement of Objects and Reasons contains the reasons, which constitute the foundation for the legislature to step in:

First, organised crime which is in existence for some years poses a serious threat to society;

Secondly, organised crime is not confined by national boundaries;

Thirdly, organised crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of protection money and money laundering, and other activities;

Fourthly, the illegal wealth and black money generated by organised crime pose adverse effects on the economy;

Fifthly, organised crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;

Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organised crime; and

Seventhly, the special law was enacted with “stringent and deterrent provisions” including in certain circumstances, the power to intercept wire, electronic or oral communication.

22. In understanding the ambit of the enactment, emphasis must be given to three definitions:

(a) Organised crime [Section 2(1)(e)];

(b) Organised crime syndicate [Section 2(1)(f)]; and

(c) Continuing unlawful activity [Section 2(1)(c)].

23. The expression “organised crime” is defined with reference to a continuing unlawful activity. The definition is exhaustive since it is prefaced by the word “means”. The ingredients of an organised crime are:

(a) The existence of a continuing unlawful activity;

(b) Engagement in the above activity by an individual;

(c) The individual may be acting singly or jointly either as a member of an organised crime syndicate or on behalf of such a syndicate;

(d) The use of violence or its threat or intimidation or coercion or other unlawful means; and

(e) The object being to gain pecuniary benefits or undue economic or other advantage either for the person undertaking the activity or any other person or for promoting insurgency.

24. The above definition of organised crime, as its elements indicate, incorporates two other concepts, namely, a continuing unlawful activity and an organised crime syndicate. Hence, it

becomes necessary to understand the ambit of both those expressions. The ingredients of a continuing unlawful activity are:

(a) The activity must be prohibited by law for the time being in force;
(b) The activity must be a cognizable act punishable with imprisonment of three years or more;
(c) The activity may be undertaken either singly or jointly as a member of an organised crime syndicate or on behalf of such a syndicate;
(d) More than one charge-sheet should have been filed in respect of the activity before a competent court within the preceding period of ten years; and
(e) The court should have taken cognizance of the offence.

25. The elements of the definition of "organised crime syndicate" are:

(a) A group of two or more persons;
(b) Who act singly or collectively, as a syndicate or gang; and
(c) Indulge in activities of organised crime.

26. Section 2(1)(c) while defining "continuing unlawful activity" and Section 2(1)(e) while defining "organised crime", both contain the expression "as a member of an organised crime syndicate or on behalf of such syndicate". While defining an organised crime syndicate, Section 2(1)(f) refers to "activities of organised crime".

27. xxx xxx xxx

28. For charging a person of organised crime or being a member of organised crime syndicate, it would be necessary to prove that the persons concerned have indulged in:

(i) an activity,
(ii) which is prohibited by law,
(iii) which is a cognizable offence punishable with imprisonment for three years or more,
(iv) undertaken either singly or jointly,
(v) as a member of organised crime syndicate i.e. acting as a syndicate or a gang, or on behalf of such syndicate,
(vi)
(a) in respect of similar activities (in the past) more than one charge-sheets have been filed in competent court within the preceding period of ten years,

(b) and the court has taken cognizance of such offence.

(vii) the activity is undertaken by:

(a) violence, or

(b) threat of violence, or intimidation or

(c) coercion or

(d) other unlawful means

(viii)

(a) with the object of gaining pecuniary benefits or gaining undue or other advantage for himself or any other person, or

(b) with the object of promoting insurgency.

29. A close analysis of the term, “organised crime” would indicate that there has to be an activity prohibited by law for the time being in force which is a cognizable offence punishable with imprisonment of three years or more, undertaken as singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, in respect of which activity more than one charge-sheets have been filed before a competent court within the preceding period of ten years and the court has taken cognizance of such offence.”

13. The Supreme Court opined that there is a vast difference between the act or activity, which is being termed or called as an offence 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. The Apex Court observed that 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. While keeping the aforesaid in mind, the Supreme Court has laid down the following propositions:-

"(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 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) [State of Maharashtra v. Bharat Shanti Lal Shah and Others, (2008) 13 SCC 5] 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 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 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 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 cognizance 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."

14. Thus, in order to constitute the offence of organized crime, it must be established that there exists a continuing unlawful activity prohibited by law, punishable with imprisonment of three years or more, undertaken either singly or jointly as a member of an organized crime syndicate or on behalf of such syndicate, in respect whereof more than one charge-sheets have been filed within the preceding period of ten years and cognizance thereof has been taken by a competent Court. As per the Supreme Court, the activity must be carried out by use of violence, threat, intimidation, coercion or other unlawful means with the object of obtaining pecuniary or other undue advantage.

15. In the present case, this Court has carefully examined the order dated 02.12.2025 passed by the Superintendent of Police, Burhanpur, whereby permission was accorded by the Superintendent of Police to invoke Section 111 of the BNS. The said order reveals that, pursuant to Circular No.199/23/76/25 dated 21.01.2025 issued by the Offence Investigation Wing, Police Headquarters, Bhopal, a report along with the case diary was placed before the Superintendent of Police seeking permission to add Section 111 of the BNS. The order further records that co-accused Mujju @ Maya has criminal antecedents of ten cases, co-accused Chetan has criminal antecedents of four cases and the present applicant has criminal antecedents of two cases. The order reveals that it

based the opinion about co-accused persons, but in none of the offences registered against co-accused Mujju @ Maya and Chetan was allegedly committed together by both of them, as evidenced from their distinct crime numbers. Solely on the basis of the aforesaid criminal antecedents, it was concluded that the acts of the co-accused persons fall within the ambit of "organized crime" under Section 111 of the BNS, whereupon the said provision came to be added in the present crime against the accused persons even including the applicant.

16. On a conjoint reading of Section 111 of the BNS and the principles laid down by the Supreme Court, it is evident that mere criminal antecedents of an accused are not, by themselves, sufficient to attract the offence of organized crime. The prosecution must *prima facie* establish the existence of the statutory ingredients, namely, a continuing unlawful activity, the involvement of an organized crime syndicate or commission of the offence on behalf of such syndicate, together with the other essential requirements incorporated in Section 111 of the BNS.

17. *Prima facie,* the material available on record does not justify the invocation of Section 111 of the BNS. Even according to the prosecution story, the allegations do not disclose that the present offence forms part of any "continuing unlawful activity" within the meaning of Section 111, nor do they indicate that the alleged act was committed by the applicant or the co-accused as members of an organized crime syndicate or on behalf of such syndicate. Equally, the order passed by the Superintendent of Police does not disclose that the charge-sheets were submitted against the accused persons and the cognizance of the offence was taken by the competent court with respect to offence registered against them. The order proceeds substantially on the existence of mere criminal antecedents, without adverting to the statutory requirements incorporated in Section 111 of the BNS. Thus, it is clear that none of the offence of

"organised crime" was committed by the applicant and co-accused persons after coming into force of Section 111 of BNS w.e.f. 01.07.2024.

18. This Court has also noticed, in several matters arising after the enforcement of the BNS, that Section 111 has frequently been invoked without first examining whether the foundational ingredients constituting the offence of organized crime are *prima facie* satisfied. In many such cases, the provision has been added merely because the accused persons have criminal antecedents. However, criminal antecedents, by themselves, cannot automatically justify the invocation of Section 111 of the BNS unless the ingredients of the offence contemplated therein are otherwise fulfilled.

19. Having regard to the material placed before this Court, it appears, *prima facie*, that none of the essential ingredients necessary for constituting the offence punishable under Section 111 of the BNS are made out in the facts of the present case. Consequently, the addition of Section 111 of the BNS, at this stage, appears to be wholly unwarranted.

20. Apart from the aforesaid aspect, it is also noteworthy that after dismissal of the earlier bail application, the complainant has been examined before the trial Court and has not supported the prosecution case. He has been declared hostile. Furthermore, co-accused Chetan, against whom the allegation of causing the firearm injury has been levelled, has already been enlarged on bail by this Court. The applicant has remained in judicial custody since 15.12.2025 and the trial is likely to consume considerable time. In the totality of the facts and circumstances of the case, this Court is of the considered opinion that the applicant has succeeded in making out a case for grant of bail.

21. Consequently, the application is allowed. It is directed that the applicant, namely Tanmay, be released on bail upon furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one

solvent surety in the like amount to the satisfaction of the trial Court concerned for his regular appearance during the pendency of the trial.

22. The applicant shall abide by all the conditions enumerated under Section 480(3) of the BNSS.

23. Accordingly, the application stands disposed of.

(RAMKUMAR CHOUBEY)
JUDGE

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