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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 17th August 2010

Date of Order: August 30th , 2010

+ Bail Appln. No.1943/2009

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Baharat @ Popat

30.08.2010

...Petitioner

Versus

State

...Respondent

Counsels:

Mr. Baldev Raj for petitioner.

Mr. Sunil Sharma, APP for respondent/State.

AND

+ Bail Appln. No.684/2010

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Vinay

...Petitioner

Versus

State Govt. of NCT Delhi

...Respondent

Counsels:

Mr. Baldev Raj for petitioner.

Mr. Sunil Sharma, APP for respondent/State.

AND

+ Bail Appln. No.2422/2009

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Risalat Hussain

...Petitioner

Versus

State NCT of Delhi

...Respondent

Counsels:

Mr. MM Singh for petitioner.

Mr. Sunil Sharma, APP for respondent/State.

AND

+ Bail Appln. No.156/2010

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Rajesh @ Dil Dil

...Petitioner

Versus

State

...Respondent

Counsels:

Mr. Baldev Raj for petitioner.

Mr. Sunil Sharma, APP for respondent/State.

AND

+ Bail Appln. No.683/2010

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Sumitra

...Petitioner

Versus

State Govt. of NCT of Delhi

...Respondent

Counsels:

Mr. Baldev Raj for petitioner.

Mr. Sunil Sharma, APP for respondent/State.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. By this common order, I shall dispose of these five bail applications preferred by the accused persons/ petitioners who are booked in FIR No.54 of 2007 under Sections 3(2) and 3(4) of MCOCA Act and are facing trial. The accused persons are in jail for about last three years and the trial is going on.

2. A perusal of record would show that the accused Vijay was involved in 30 cases at different police stations in Delhi. These cases are of theft, Arms Act, NDPS Act and

preparation of decoity. The majority of cases are of theft. Accused Baharat was involved in 15 cases of similar nature. Accused Rajesh @ Dil Dil was involved in 37 cases mostly of theft and criminal assault while committing theft, one case of attempt to murder and one under Excise Act, one case for preparation for decoity. Accused Sumitra was involved in 22 cases mostly under Excise Act and two cases under NDPS Act, one of criminal assault and theft. Accused Risalat Hussain was involved in one case under NDPS Act.

3. The evidence gathered against the accused persons shows that the accused persons were running a organized crime syndicate and these accused persons were indulging in chain-snatching using high- powered motorcycles. They were also involved in other crimes under Excise Act and under NDPS Act. It was from these criminal acts including that of chain snatchings that they received money and were leading a lavish lifestyle. They had a widespread network including of those persons who were lending their names and financing vehicles and received stolen property. They had earned a lot of money from criminal activities and purchased costly motorcycles and cars. Their crime list included many criminal cases of attempt to murder, chain snatching, Arms Act, NDPS Act, preparation to commit decoity. Along with the chargesheet, a list of cases pending against each of the accused person was also filed.

4. Accused Rajesh @ Dil Dil was a BC of Police Station Mangolpuri area. He had been convicted in four cases of chain snatching during last five years. A scrutiny of modus operandi of gang would reveal that he was running an organized syndicate for committing these crimes. Police seized four Pulsar motorcycles bearing numbers DL8S AK 0681, DL8S AK 0684, DL4SBD 5608 and DL4S BD 3239 from them. Out of these four motorcycles, two belonged to Somwati and the other two belonged to Sumitra, both members of this syndicate. Police also found two cars, one Alto DL9C P6763 and

another Santro DL4CS 4862 being used for criminal activities and both were financed by Somwati. Accused Risalat Hussain was the person who used to help these criminals by lending his name for purchase of the cars and motorcycles. He had made a confessional statement to the learned ACMM wherein he admitted that the money for purchase of cars / motorcycles was paid to him by Mrs. Somwati, another member of the syndicate and he used to lend his name for purchase of these vehicles. He opened an account in which the members of this crime syndicate used to deposit money so that the installments of cars and motorcycles could be paid. He also confessed before learned ACMM that he was given a sum of Rs.15,000/- for getting an FD so that he could stand surety for husband of member of the syndicate, involved in crime.

5. A perusal evidence as stated in the chargesheet coupled with the confessional statement of accused Risalat Hussain would show that the accused persons belonged to an organized crime syndicate for committing crimes, being managed in a businesslike manner. The motorcycles and cars being used by the syndicate were of make Bajaj Pulsar costing between Rs.60,000/- to Rs.80,000/-. The highest speed of these motorcycles is 145 km/h. The crime of chain-snatching at the roads of Delhi and around was being done by the members of the syndicate using these motorcycles. Two cars were also being used for criminal activities. These cars were also purchased in the name of accused Risalat Hussain who used to a part of this syndicate and admitted that the vehicles were being purchased in his name, though finance was coming from other members of syndicate.

6. Section 17 Sub-section(2) provides special rules of evidence of MCOCA Act and reads as under:

“17. Special Rules of evidence.

(1) xxxxxxxx

(2) Where it is proved that any person involved in an organised crime or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the Special Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities”.

7. This Court during arguments on bail applications asked the counsel for the accused persons to explain possession of these costly motorcycles and cars and the purpose for which they were purchased and the source of funds for purchase of cars and motorcycles and the source of income of any of the accused person but no source of income of any of the members of syndicate was disclosed to the Court. Even otherwise, Section 17(2) puts onus on the accused persons to prove that they had sufficient pecuniary resources for acquiring these properties. Since prima facie accused persons failed to disclose the source of their income, it has to be presumed that these properties were acquired from the earning of the syndicate for purposes of committing more crimes.

8. Section 21 of MCOCA Act lays down stringent rules for grant of bail. The Supreme Court in *Chenna Boyanna Krishan Yadav v State of Maharashtra* (2007(1) SCC 242 made following observations:

“13. It is plain from a bare reading of the non obstinate clause in the sub-section that the power to grant bail by the High Court or the Court of Sessions is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitation placed by Section 21 (4) of MCOCA apart from the grant of opportunity to the Public Prosecutor the other twin conditions are the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be

based on reasonable grounds. The expression reasonable grounds mean something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstanced as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus recording of findings under the said provisions is a sine qua non for granting bail under MCOCA.”

9. The learned counsel for accused/petitioner Rajesh @ Dil Dil has submitted that under similar circumstances, accused Somwati was granted bail by this Court. I have perused the order dated 3rd December 2009. Accused Somwati was owner of two motorcycles and two cars. The order dated 3rd December 2009 is totally silent about the effect of Section 21 and Section 17(2) of MCOCA Act. It seems that the learned State counsel had not brought these provisions to the notice of the Court. Moreover, the Court while granting bail had not given its finding as required under Section 21 of MCOCA that there was no possibility of accused Sumitra indulging into crime further if granted bail and that prima facie she was not involved in the crime under MCOCA. Thus Sumitra was granted bail on considerations other than those relevant under MCOCA. I find that the order of bail of Sumitra is of no help to the present accused persons. Similarly order passed in respect of other accused Sunil Kumar by this Court is also of no help because in Sunil Kumar's case prime consideration was that there was no sanction given by the competent authority for his prosecution under MCOCA. In view of no sanction it was stated that prima facie he was not guilty of offences under MCOCA. However, the State counsel has brought to my notice that sanction order was passed by competent authority under Section 23(2) of MCOCA, as applicable to Delhi, against all the accused persons namely Lal Singh, Somwati, Ajay @ Vikram @ Gaimda, Vijay, Sandeep @ Kala, Anil, Sunny and Ram Kishan on 16th January 2007. A copy of another order dated 27th July, 2009 has been placed on record and showing that permission under Section 23(2) was

also given in respect of (i) Rajesh @ Dil Dil, (2) Sandeep, (3) ajay @ Vickram (4) Vinay (5) Risalat Hussain (6) Somwati (7) Lal Singh (8) Sumitra (9) Sunil (10) Baharat. Copy of these orders have been placed before me.

10. It seems that the State counsel earlier failed to bring to the notice of this Court that even in the case of Sunil Kumar, sanction order under Section 23(2) of MCOCA was obtained from the competent authority.

11. I consider that it is not possible for this Court to come to a conclusion that in case applicants are granted bail, they would not indulge into similar kinds of activities again. I also find that it is not a case that this Court can come to conclusion that the accused persons were not prima facie involved in offences under MCOCA. I, therefore, find no reason to allow the bail applications of above accused persons. The applications are hereby dismissed.

August 30, 2010
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SHIV NARAYAN DHINGRA, J