IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [BA] No.860 of 2016
[Harvindarsingh @ Pintu Kulwantsing Bhullar Vs. State of Mah.]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. R. M. Daga with Mr. C.R. Thakur, Advs., for the applicant.
Mr. Ashirgade, APP for respondent.

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CORAM : P.N. DESHMUKH, J.

DATE : 08th December, 2016

This is an application by the accused in Crime No. 38/2016 registered with Jaripatka Police Station, Nagpur, for the offences under Sections 363, 384, 385 and 386 read with Section 34 of Indian Penal Code, and Section 3 (1) of the Maharashtra Control of Organised Crime Act, 1999 [hereinafter referred to as “MCOC Act”, for short], for grant of bail.

The learned counsel for the applicant submitted that no provisions of the MCOC Act can be applied in the present case in view of the fact that there are no ingredients on record attracting the said provisions, as, apart from the present Crime No. 38/16 registered against the applicant and co-accused, three other crimes which are stated to be registered are for the offences punishable under Section 324 of Indian Penal Code and as such those being offences against body, do not come within the ambit of Section 2 (d) and 2 (e) of the MCOC Act. The learned counsel for the applicant, therefore, contended that no provisions of MCOC Act are attracted which are applied in the present crime.

It is further contended that had the provisions of MCOC Act been not applied in the present crime, then, in that case, out of the crimes registered against the Applicant, offences punishable under Sections 384 and 386 of Indian Penal Code would only be non-bailable, as other offences punishable under Sections 363 and 385, Indian Penal Code, are bailable offences.

To substantiate the applicant's case as afore stated, the learned counsel for the applicant has referred to the terms “continuing unlawful activity” and “organized crime” as defined in Section 2 (d) and 2 (e) respectively of the MCOC Act, and has relied upon the law laid down by the Hon'ble Supreme Court in **State of Maharashtra Vs. Shiva alias Shivaji Ramaji Sonwane & others** [(2015) 14 SCC 272].

Learned APP has opposed the application on the line of reply on record, and has contended that apart from earlier charge-sheets filed against the applicant for offence under Section 384 of Indian Penal Code, there is one more offence registered against the applicant under Section 307, Indian Penal Code. However, on obtaining instructions from the Investigating Officer who is present in the Court, learned APP has fairly contended that while applying the provisions of MCOC Act in the present crime, earlier crimes registered against the applicant, which are considered, are the only crimes involving offence punishable under Section 324, Indian Penal Code.

In that view of the matter, it is noted that while applying the provisions of Section 3 of MCOC Act in this crime, what is considered are three offences registered against the applicant being Crime Nos. 274/11, 411/12 and 662/2014, all registered for the offence under Section 324, Indian Penal Code.

In the backdrop of submissions advanced on behalf of applicants and by learned Addl. Public Prosecutor, to attract the provisions under the MCOC Act, which has been applied in the present crime, it is necessary to understand the scheme of Section 2 (1) (d) (e) of the MCOC Act, which is reproduced below:-

> "2. **Definitions**. (1) In this Act, unless the context otherwise requires.-
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> (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 organized 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;"

Similarly, the definition of "organized crime" as contemplated in Section 2 (e) reads thus:-

> "(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;"

A conjoint reading of said definitions would, thus, reveal that for applying said provisions, it is necessary to establish that accused is involved in any activity which is prohibited by law, of which cognizance has been taken and is punishable with imprisonment of three years or more, undertaken either singly or jointly in respect of which more than one charge-sheets have been filed before the competent court within the preceding period of ten years, of which Court has taken cognizance.

It is further necessary to establish that the crime has been committed by the accused either singly or jointly as a member of the organised crime syndicate for and on behalf of the syndicate by use of violence, threat etc., and should be with an object of gaining pecuniary benefits or gaining other undue economic or other advantage for himself or any other person.

In the light of requirements of law as aforesaid, while applying MCOC Act in the present crime, earlier offences registered against the applicant which are duly considered, are under Section 324, Indian Penal Code and as such, prima facie, it is found that while committing said offences, applicant-accused had not committed such offence with any object or intention of gaining pecuniary benefits or gaining undue pecuniary or other advantage. In that view of the matter, it is found that no provisions of MCOC Act, as applied in the present crime, can be applied for want of sufficient material on record to attract the said provisions.

In that view of the matter, if the above stated provisions of MCOC Act applied in the present crime had not been applied, then the case of the applicant would fall under the provisions of Indian Penal Code for the offences punishable under Sections 363, 384, 385 and 386 read with Section 34 of Indian Penal Code.

On considering the definitions and requirements for applying the provisions MCOC Act, perusal of report by the complainant – Mahesh dated 21st January, 2016 reveals that co-accused Goldi Bhullar along with his brother, the applicant – Harvindersingh alias Pintu Bhullar on 5th January, 2016 had demanded Rs. 1,50,000/- from him by making a demand from Mobile Phone No. 9146150951. On complainant's denying to part away with the said amount, he was extended threats of life. It is further stated that in the background of above threats, on 13th January, 2016 at around 12.00 noon, the accused-applicant along with co-accused Goldi on visiting the house of complainant at Jaripatka, forcibly took him in their vehicle towards Patankar Chowk and by making the vehicle stationary near the house of co-accused Goldi, assaulted him by fist blows in the open ground where co-accused informed that in spite of his demand of Rs. 1,50,000/-, why the complainant has not satisfied said demand and further extended threat to kill him.

Complainant further states that due to such threats extended to him, on the same day at 2.00 p.m., he paid Rs. 50,000/- to the applicant in the presence of co-accused Goldi, upon which co-accused made further demand of Rs. 1,00,000-00, asking the complainant to make the said payment in a short time. It is further stated that as complainant could not arrange to pay balance amount, applicant as well as co-accused were continuously extending life threats to complainant, demanding said amount of Rs. 1,00,000-00 from Mobile Phone No. 9146150951.

Thus, on considering the contents of the report, it is found that amount of Rs. 1.50 lakh was demanded by co-accused Goldi. Learned APP has made available record of cell numbers as well as CDRs. On considering the same, it is noted that the Cell Phone number 9146150951 is owned by co-accused while Cell Phone number ending with “172” [9890400172] is owned by the applicant. In that view of the matter, on considering the contents of report, it is, thus, noted that initial demand on 5th January, 2016 was made from Cell Phone No. 9146150951 which is of co-accused and, thus, by said accused. From the contents of report, though applicant is found to be accompanying co-accused, the demand is apparently made by co-accused Goldi.

In the background of facts in the application, the learned counsel for the applicant relied upon the decision of Hon'ble Supreme Court in the case of State of Maharashtra Vs. Shiva [referred supra] in which, in para 10 thereof, it is observed thus:-

> “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 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."

Thus, mere proof of filing of charge-sheets in the past is not enough to hold the persons accused in such charge-sheets to be guilty of the the offences of committing of committing organized crime punishable under Section 3 of MCOC Act. What is equally important is to prove that the accused were guilty of committing the offence of organized crime by reason of their continuing unlawful activities and any such unlawful activity should be by the use of threat of violence, intimidation, coercion or other unlawful means with the objective of "gaining pecuniary or other advantages" and that the provisions MCOC Act can be invoked then by strictly complying with the provisions of Section 23 of the Act.

In the case in hand, apart from the present Crime No. 38/16 registered against the applicant and co-accused, three other crimes which are stated to be registered are for the offences punishable under Section 324 of Indian Penal Code and as such those being offences against body, do not come within the ambit of Section 2 (d) and 2 (e) of the MCOC Act.

Having considered the facts involved in the present application, it is, thus, found that Section 3 of the MCOC Act could not be invoked only on the basis of previous charge-sheets filed against the accused-applicant, as Section 3 would come into play only if the accused is found to have committed an offence for a gain or any pecuniary benefit or undue economic or other advantage after promulgation of MCOC Act.

In that view of the matter, it is found that no provisions of MCOC Act are attracted and since the alleged demand of Rs. 1.50 lakh is made by the co-accused, the case of the applicant is on the better footing than the co-accused Goldi Bhullar.

Having considered the facts and law as aforesaid, the application is liable to be allowed by imposing certain conditions upon the applicant as per the order below:-

[a] The applicant shall be released on bail on his executing a Personal Bond in the sum of Rs. 50,000-00 [rupees fifty thousand only] with one surety in the like amount.

[b] While on bail, the applicant shall not enter the territorial jurisdiction of Nagpur City. At this stage, learned counsel for the applicant on instructions states that pending trial, applicant shall stay at Wardha.

[c] On the applicant's release on bail, he shall forthwith submit a proof of his address at Nagpur as well as at Wardha where he proposes to stay, to the Investigating Officer, and in the event of change of address in future, shall inform the same to the Investigating Officer.

[d] The applicant shall attend the Police Station within whose jurisdiction he shall reside at Wardha once in three months, on the first day of each such month.

[e] Needless to say that the applicant shall be allowed to enter the limits of Nagpur city to attend his case on the dates to be fixed by the Court and on his attending the Court, he shall mark his presence at Jaripatka Police Station, Nagpur, during the course of that particular day.

Judge

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