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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 265/2016**

MOHD. IQBAL GHAZI

..... Petitioner

Through: Mr.R.M.Tufail, Mr.Vishal Raj
Sehijpal & Ms.Meenakshi Joshi,
Advocates

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr.Sudershan Joon, APP for the State
with ACP Anand Kumar S.D.O.
Seelampur

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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04.02.2016

CRL.M.A.1975/2016

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 265/2016

1. The petitioner Mohd. Iqbal Ghazi is seeking interim bail for a period of three months on medical grounds in case FIR No.351/2013 under Sections 3(2) & 3(4) of MCOCA registered at PS Seelampur, Delhi.
2. On behalf of petitioner, Mr.R.M.Tufail, Advocate has submitted that the petitioner is an old man about 76 years of age and is also partially blind. He further submits that petitioner is in poor state of health and even in the Court he was produced on wheel chair which fact may be confirmed by this Court by issuing production warrants.
3. Mr.R.M.Tufail, Advocate has further submitted that wife of the

petitioner is also suffering from breast cancer and in this old age the petitioner is required to be with his wife so that both of them can spend their last days together.

4. Mr.R.M.Tufail, Advocate has prayed for release of the petitioner on bail on humanitarian ground stating that the medical condition of the petitioner is such that he requires urgent treatment.

5. On behalf of State, prayer for bail has been strongly opposed on the ground that the trial has commenced, witnesses are yet to be examined and in view of the nature of the offence for which the petitioner has been charged i.e. under Sections 3(2) & 3(4) MCOCA, his release is likely to have adverse effect on the witnesses. It is also submitted by the State that the petitioner is capable of influencing the witnesses and so far as his medical condition is concerned, adequate treatment has been provided to him and State is ready to provide further treatment in any Government hospital.

6. Learned Trial Court while dismissing the application of the petitioner on interim bail on medical grounds has given the following reasons:-

“5. This application has been moved under Section 21(4) of MCOC, Act r/w Section 439 Cr.PC for 3 months interim bail on medical ground. To consider any bail under MCOC Act that two requirements are to be satisfied. Firstly, that the Court is of the opinion that accused is not guilty for the offence under MCOC Act. Secondly, he is not likely to commit any offence while on bail. However, none of the condition is satisfied in this case as this Court has already framed the charges against the accused under Section 3(1) (2) (3) (4) & (5) of MCOC, Act and evidence is going on. All the material witnesses are yet to be examined and release of accused may definitely hamper the trial. Accused is an influential person and having criminal antecedents. Many co-accused who are family members or members of same syndicate are already absconding and it

cannot be ruled out that accused may not indulge in similar activities. Merely medical condition of accused cannot restrain him to indulge in similar type of activities.

6. Further, accused Mohd. Iqbal Gazi is getting treatment in Jail Hospital and if he is not satisfied with treatment then he can approach to this Court for better treatment and Court may consider it if possible under legal frame work, but it cannot be a ground to release the accused on interim bail.

7. The case cannot be at par to the other cases where other courts have granted bail to the accused on the request of Jail Superintendent on account of medical ground. In those cases, no specific observation of the Court was required as provided under Section 21(4) of MCOCA Act. In such circumstances, those cases cannot be considered similar to this case, accordingly, I am of the considered opinion that accused is not entitled for any interim bail, hence application dismissed.”

7. I have considered the submissions made on behalf of the learned counsel for the petitioner.

8. Section 21(4) of MCOCA deals with consideration for grant of bail and is reproduced hereinbelow:-

“21. Modified application of certain provisions of the code.

xxxx xxxx xxxx xxxx

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

9. The Supreme Court in Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Anr., (2007) 1 SCC 242 after considering its earlier

judgment in Ranjitsing Brahmajeetsingh Sharma (supra) observed:-

“13. It is plain from a bare reading of the non obstante clause in the sub-section that the power to grant bail by the High Court or the Court of Session is not only subject to the limitations imposed by Section 439 of the Code but is also subject to the limitations 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" means 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 provisions requires existence of such facts and circumstances 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 provision is a sine qua non for granting bail under MCOCA.”

10. The petitioner is facing prosecution under a special Statute i.e. MCOCA which contains specific provision to consider grant of bail and such provisions cannot be ignored by this Court while considering the prayer for release on bail.

11. The petitioner herein has been charged with the offence under MCOCA hence his application has to be considered keeping in mind the relevant provision i.e. Section 21(4) of MCOCA.

12. In this case since charge has been framed against the accused/petitioner, he cannot claim that there are no reasonable grounds for believing that he is not guilty of such offence. Learned APP for the State has already expressed his apprehension about the witnesses being likely to be

influenced if petitioner is ordered to be released on bail.

13. The petitioner is suffering from various ailments as is reported by jail hospital but that cannot be made a ground for his release in a case where he is facing trial under MCOCA as the conditions required to be satisfied for release on bail in a case under MCOCA are not satisfied by the petitioner. The petitioner is seeking bail for himself on account of serious medical condition. In that case he cannot be in a position to take care of his wife who is stated to be suffering from breast cancer. Hence this cannot be considered as a ground to grant interim bail to the petitioner.

14. Since the petitioner has failed to satisfy the twin conditions on the aspects mentioned in clause (a) and (b) of Section 21(4) which are sine-qua-non for grant of bail in MCOCA, his prayer for release on bail is rejected.

15. However, as it is the duty of the State to provide proper treatment to the petitioner, the petitioner is at liberty to approach the learned trial Court to seek consultation/treatment from any Government Super Speciality Hospital.

16. The bail application is dismissed.

PRATIBHA RANI, J.

FEBRUARY 04, 2016/‘pg’