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

+ **BAIL APPLN. 196/2017**

AJAY @ RECOVERY Petitioner

Through: Mr.K.K.Sharma, Sr.Adv. with
Mr.Deepak Sharma, Adv.

versus

STATE Respondent

Through: Ms.Neelam Sharma, APP.
Mr.Sanjay Singh, ACP, Gokalpuri.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **22.05.2017**

Crl.M.A.8316/2017

Exemption allowed, subject to all just exceptions.

Application is disposed of.

Crl.M.A.8315/2017

For the reasons stated in the application, the petitioner is allowed to place on record the copy of the order of discharge dated 27.04.2017.

Application is disposed of.

BAIL APPLN. 196/2017

The petitioner seeks bail in anticipation of his arrest in connection with FIR No.1227/2015 dated 27.11.2015 (P.S.Bhajanpura) instituted for the offences under Sections 3/4 of the MCOCA, 1999.

It has been submitted on behalf of the petitioner that the case was initially registered against co-accused Roshanlal Verma, Amarnath Bajaj and their associates. After obtaining the sanction under Section 23 of the Act, the prosecution against the aforesaid persons were launched.

One Rajiv Anand who was also an accused, made a disclosure that the petitioner worked for the accused Amarnath Bajaj. Thereafter, aforesaid Amarnath Bajaj disclosed that had purchased property in the name of the petitioner and another property of his was transferred in the name of the wife of the petitioner so that the police may not trace it.

Learned counsel appearing for the petitioner has drawn the attention of this Court to a judgment whereby all the accused persons of the case, at whose behest or on whose disclosure, the petitioner has been roped in the present case, have been discharged of the offences under the MCOCA.

Para 66 of the aforesaid judgment reads as hereunder:-

66. Keeping in view of the facts and circumstances of the case, I am of the considered opinion that the prosecution has failed to prove that the accused Roshan Lal Verma and Amarnath Bajaj formed an organised crime syndicate to carry out their organised satta activities or that accused D.P.Yadav ever abetted or harboured any such organized crime or syndicate. As such, even the un-rebutted case of the prosecution has failed to prove the involvement of the accused on legal or factual grounds under the provisions of MCOCA. The observation of the Hon'ble Supreme Court of India made in State of Maharashtra v. Lalit Somdatta Nagpal (Supra) is necessary to remind that stringent provisions of MCOCA have to be strictly interpreted and concerned authorities are duty bound to the strict observance of the said provisions. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to

the electronic media have also been provided for. In such a circumstance, strict compliance of provisions of this Act must be made at the time of consideration of proposal itself, otherwise accused booked under such law is bound to suffer like in the present case, as accused persons are lying in JC for the last about 1½ years without bail, but prosecution has filed half investigated chargesheets without annexing documents seized during the investigation. As such, the entire factual evidence is of no use. Since the case of the prosecution is not maintainable on legal as well as factual grounds, accordingly, it will be injustice towards the accused persons to put them on trial under stringent law without any legal evidence. Accused are entitled for discharge of all charges for which they have been chargesheeted, accordingly, discharged. They should be released from the custody immediately, if not required in any other case, subject to furnishing of BB under Section 437 Cr.PC within 3 days. All the miscellaneous applications like bail or other etc. pending, if any, stands dismissed as infructuous. File be consigned to record room.”

Learned counsel for the petitioner states that, now with the discharge of the accused persons, it would not be of no relevance for the petitioner to be put in custody for any interrogation.

Learned counsel appearing for the State, however, opposed the prayer for grant of anticipatory bail on the twin grounds viz. that sub Section (3) of Section 21 of the MCOCA Act, 1999 bars the grant of anticipatory bail and that the petitioner was declared a P.O and, therefore, not entitled to anticipatory bail.

In response to the aforesaid contention of the State, Mr.Sharma, learned senior advocate submitted that while deciding an anticipatory bail application under the MCOCA Act in Bail Appln.1811/2013, Mohd.Shakil @ Aamir vs. State NCT of Delhi, a bench of this Court, by drawing parallel

to the provisions of MCOCA Act and The SC and ST (Prevention of Atrocities) Act, 1989, which are in pari-materia, held that Section 438 of the Code of Criminal Procedure is maintainable.

What the Court held was that the averments in the FIR and the materials collected during the course of investigation ought to indicate that an offence under the MCOCA Act is made out. Without such material, any accused was entitled to the privilege of the anticipatory bail.

In the aforesaid matter, thereafter, the State went to the Supreme Court of India. Before the Supreme Court, learned counsel appearing for the State pointed out that the respondent had already been enlarged on regular bail and therefore, the question whether an anticipatory bail is maintainable in a case under the MCOCA was felt to be an academic question and the same was not examined by the Supreme Court.

Mr.Sharma, learned senior advocate further submitted that in view of the discharge of the accused persons at whose instance the name of the petitioner transpired, it is clearly established that there is no material, as on date, pending against the petitioner and in all its probability the petitioner also shall be discharged. With respect to the petitioner having been declared a P.O, learned counsel for the petitioner drew the attention of this Court to the two orders passed by the Court below wherein the Court took note of the fact that since the petitioner had appeared before the Court, the final order under Section 82 may not be passed and thereafter on 23.01.2017, the anticipatory bail petition of the petitioner was rejected. In that view of the matter, it has been submitted on behalf of the petitioner that his being declared a Proclaimed Offender was not correct.

Taking into account the aforesaid facts as also the order of discharge of all other accused persons, this Court is inclined to grant bail to the petitioner in anticipation of his arrest in the case.

In the event of arrest or surrender, the petitioner is directed to be released on bail on his furnishing a bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the Arresting Officer.

Needless to state that the petitioner shall visit the police station as and when required of him and he would cooperate to the fullest. In case the petitioner is found to be evading any specific/pointed query, it would be open for the State to apply for cancellation of his bail.

The Bail Application stands disposed of.

ASHUTOSH KUMAR, J

MAY 22, 2017

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