IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1048 OF 2018

PARVEZ AHMED SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Shirish Gupte, Senior Counsel a/w. Mr.Ali Bubere i/b. Mr.Rajendra Rathod, Advocate for the Appellant.

Mrs.M.M.Deshmukh, APP for the Respondent - State.

CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.

DATE : RESERVED ON 16th APRIL 2019
PRONOUNCED ON 23rd APRIL 2019

<u>JUDGMENT</u> : (PER : A .M. BADAR, J.)

1 By this appeal, the appellant/accused no.3 is challenging the order dated 8th August 2018 passed by the learned Special Judge under the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as the MCOC Act) for Greater

Mumbai, at Exhibit 66 in MCOC Special Case No.16 of 2015 so also the Charge dated 20th February 2019 framed by the said court at Exhibit 89. He is further praying for allowing the discharge application at Exhibit 66 filed in the said MCOC Special Case Nos.16 of 2015 and 24 of 2015 pending on the file of learned Special Judge under the MCOC Act for Greater Mumbai, for offences punishable under Sections 387 read with 34, 120B, 465, 471 of the Indian Penal Code read with 3(1)(i), 3(2) and 3(4) of the MCOC Act.

2 Facts, in brief, leading to filing of the present appeal, can be summarized thus :

(a) On 2nd April 2015, First Informant Zulfikar Ali Abdul Rahim Shaikh lodged report which resulted in registration of Crime No.142 of 2015 for the offence punishable under Section 387 read with 34 of the Indian Penal Code against accused persons. During the course of investigation of this crime by Police Station Nagpada, Mumbai, the investigation was transferred to the Crime Branch Unit 10 and accordingly, Crime No.48 of 2015 came to be registered for offences punishable under Sections 387, 471, 465, 120B read with 34 of the Indian Penal Code as well as under Sections 3(1)(i), 3(2) and 3(4) of the MCOC Act against the accused persons. It is case of the prosecution that First Informant Zulfikar Ali Shaikh is owner of premises admeasuring 8300 square feet for commercial user at B Wing of Sutarwala Chawl, having estimated market value of Rs.65 Crore. Accused no.5 Faizal Vadgama is a builder claiming right to redevelop Sutarwala Chawl in which the First Informant is having premises for commercial use. On 18th February 2015, the First Informant was called by accused no.1 Tariq Siddiqui and accused no.5 Faizal Vadgama. He was informed by accused no.5 Faizal Vadgama that he wants to redevelop entire Sutarwala Chawl and the First Informant should accept the consideration offered by him. Accused no.1 Tariq Siddiqui informed First Informant Zulfikar Ali Shaikh to accept two flats each having value of Rs.2 Crore or an amount of Rs.4 Crore in cash and surrender the premises having commercial use admeasuring 8300 square feet, estimated value of which was Rs.65 Crore. First Informant Zulfikar Ali Shaikh out rightly rejected this proposal.

(b) According to the prosecution case, thereafter, accused no.5 Faizal Vadgama with the aid of appellant/accused Parvez Shaikh hired services of absconding accused Ravi Poojari for pressurizing First Informant Zulfikar Ali Shaikh to surrender his premises for redevelopment by accepting paltry sum of Rs.4 Crore. For contacting absconding accused Ravi Poojari, having abode at some foreign country, services of accused no.2 Abdullah Ahmed @ Baba and accused no.4 Yusuf Bachkana were availed by contacting them at the Central Jail at Mysore by visiting the said jail as well as hospital at Mysore and by making payment of hefty sum of money to accused no.1 Tariq Siddiqui apart from providing him two cell phones for the purpose of contacting the First Informant as well as absconding accused Ravi Poojari. Ultimately, brother of the First Informant as well as the First Informant received threat calls to surrender the commercial premises to accused no.5 Faizal Vadgama for the purpose of redevelopment by accepting paltry sum. Ultimately, First Informant Zulfikar Ali Shaikh lodged the First Information Report (FIR) and the investigation ultimately resulted in filing of the charge-sheet against the accused persons.

(c) After getting bail from this court vide order dated 24th July 2017 in Criminal Bail Application No.2033 of 2016 (Coram : Revati Mohite-Dere, J.), appellant/accused no.3 Parvez Shaikh preferred an application for discharge from offences alleged against him, by contending that, this court while granting bail to him vide order dated 24th July 2017 had observed that prima facie it is difficult to come to the conclusion that the appellant/accused no.3 is guilty of offences with which he is charged. It is further contended by him in the said application for discharge that except his confessional statement which is subsequently retracted, there is no iota of evidence to connect appellant/accused no.3 Parvez Shaikh with the alleged crime of extortion as a member of the organized crime syndicate headed by absconding accused Ravi Poojari. With this, claim for discharge was made by appellant/accused no.3 Parvez Shaikh. The claim, so made, was opposed by the prosecution by filing their say at Exhibit 68 contending that apart from confessional statement of the appellant/accused no.3 recorded under Section 18 of the MCOC Act, there is other evidence on record to show complicity of the appellant /accused no.3 in offences alleged against him.

(d) After hearing the parties, the learned Special Judge under the MCOC Act, vide the impugned order dated 8th August 2018, was pleased to reject the application at Exhibit 66 claiming discharge moved by the appellant/accused no.3.

(e) Feeling aggrieved by the impugned order dated 8th August 2018 rejecting his claim for discharge from the MCOC Special Case No.16 of 2015, the appellant/accused preferred this appeal under Section 12 of the MCOC Act. During pendency of the appeal, the learned Special Judge was pleased to frame the Charge (Exhibit 89) against the appellant/accused no.3 and other accused persons for offences punishable under Section 387 read with 34 of the Indian Penal Code, under Section 120B read with 34 of the Indian Penal Code, under Section 465 read with 34 of the Indian Penal Code, under Section 471 read with 34 of the Indian Penal Code as well as under Sections 3(1)(i), 3(2) and 3(4) of the MCOC Act. By effecting amendment to the criminal appeal, the appellant/accused no.3 has also challenged the Charge, so framed against him on 20th February 2019, by the learned Special Judge under the MCOC Act, Greater Mumbai.

3 We have heard the learned senior counsel appearing for the appellant/accused at sufficient length of time. He drew our attention to the charge-sheet as well as the order dated 24th July 2017 passed by this court (Coram : Revati Mohite-Dere, J.) in

Criminal Bail Application No.2033 of 2016 filed by the appellant/accused no.3 and contended that this court while releasing the appellant/accused no.3 on bail came to the conclusion that, prima facie, it is difficult to come to the conclusion that he is guilty of offences with which he is charged. With the aid of this finding it is argued that, therefore, the appellant/accused no.3 is entitled for discharge, as this court has already concluded that there is no ground for presuming that the appellant/accused no.3 has committed offences alleged against him. The learned senior counsel further argued that appellant/accused no.3 Parvez Shaikh was an employee of accused no.5 Faizal Vadgama, and therefore, he was trying hard to bring about settlement of dispute between First Informant Zulfikar Ali Shaikh and accused no.5 Faizal Vadgama, who was builder trying to redevelop Sutarwala Chawl. The learned senior counsel further argued that the confessional statement was subsequently retracted by the appellant/accused no.3 and as such, it cannot be made use of, for presuming that the appellant/accused no.3 committed offences alleged against him.

4 The learned APP opposed the claim for discharge by contending that apart from the confessional statement of the appellant/accused no.3, there is evidence in the nature of meeting of the appellant/accused no.3 with the co-accused not only at Mumbai but also at the jail at Mysore and the hospital at Mysore for pressurizing the First Informant to part with his valuable property for a paltry sum. The learned APP further argued that the prosecution has collected Call Detail Records (CDR) and has also intercepted telephonic conversation between the accused persons showing complicity of the appellant/accused no.3 in the crime in question.

5 We have considered the submissions so advanced and also perused the charge-sheet.

6 The appellant/accused no.3 is claiming discharge. For framing the Charge, the Judge is required to consider the material contained in the charge-sheet, in order to find out whether there

is ground for presuming that the accused has committed the offence with which he is charged. If on scrutinizing the charge-sheet for such purpose, the Judge considers that there is not sufficient ground for proceeding against the accused, then the accused is required to be discharged by recording the reason for doing so. By now it is well settled that at the stage of framing of the Charge, there is limited purpose to sift and weight the evidence for finding out whether or not a prima facie case against the accused has been made out. Where the material placed before the court disclose grave suspicion against the accused, then the court can frame Charge against him and can proceed with the trial. At the stage of consideration of an application for discharge made by an accused, the court has to proceed with an assumption that the material brought on record by the prosecution is true and then it is bound to evaluate such material with a view to find out whether the facts emerging from such material, during investigation, taken at their face value, disclose the existence of all the ingredients constituting the offences alleged against the accused. The court is not expected to make a deep probe into the matter in order to find out whether such material would lead to a conviction. The test is whether there is ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.

7 In the case in hand, the charge-sheet reveals that by following due process of law, the confessional statement of appellant/accused no.3 Parvez Shaikh came to be recorded. It will have to be seen during the course of the trial whether such confessional statement of the appellant/accused no.3 is voluntary or not and it is for the prosecution to prove that all requirements of law have been complied with prior to recording the confessional statement of the appellant/accused no.3 under Section 18 of the MCOC Act. It will be for the appellant/accused no.3 to demonstrate that his confession was not made voluntarily and it is not admissible in evidence by bringing material on record to that effect during the course of the trial. However, as of today, there is confessional statement of the appellant/accused no.3 on record, which is an admissible piece of evidence. Perusal of

confessional statement of the appellant/accused no.3 shows that as he was having say in the locality, he was provided employment by accused no.5 Faizal Vadgama, the builder, who was interested in redeveloping Sutarwala Chawl where First Informant Zulfikar Ali Shaikh was having premises meant for commercial use, worth about Rs.64 Crore. Perusal of the confessional statement reveals that Zulfikar Ali Shaikh was not in a mood to part with possession of his valued commercial premises. Task of finding out a person who will bring First Informant Zulfikar Ali Shaikh to terms was then taken over by appellant/accused no.3 Parvez Shaikh. He, then, engaged accused no.1 Tariq Siddiqui to bring the First Informant to terms. From time to time, appellant/accused no.3 Parvez paid hefty amount to accused no.1 Tariq Siddiqui by taking that amount from the builder i.e. accused no.5 Faizal Vadgama. Apart from this, even three cell phones were provided by the appellant/accused no.3 to the co-accused for conducting the operation smoothly by making calls to the First Informant as well as to absconding accused Ravi Poojari, who is allegedly residing in some foreign country. The charge-sheet reveals that the appellant/accused no.3 with the help of accused no.1 Tariq Siddiqui hired services of accused no.4 Yusuf Bachkana and accused no.2 Abdullah Ahmed @ Baba, who were lodged in the jail at Mysore. For having meetings with them, the appellant/accused no.3 accompanied accused no.1 Tariq Siddiqui and builder accused no.5 Faizal Vadgama to Mysore. He had even participated in the meeting with accused no.4 Yusuf Bachkana at the hospital at Mysore. In that meeting, details of First Informant Zulfikar Ali Shaikh such as, his phone numbers, were given to accused no.4 Yusuf Bachkana and accused no.2 Abdullah Ahmed @ Baba. Monies as well as cell phones were provided to accused no.2 Abdullah Ahmed @ Baba and accused no.4 Yusuf Bachkana during the course of that meeting, attended by the appellant/accused no.3. Infact, all these operations were going on as per the field work done by appellant/accused no.3 Parvez Shaikh. In the meeting of 26th February 2015, the accused persons made a phone call to absconding accused Ravi Poojari and the talks regarding the work to be done took place. On returning to Mumbai from that meeting held at the hospital at Mysore, appellant/accused no.3 Parvez Shaikh paid an amount of Rs.1 lakh to accused no.1 Tariq Siddiqui, who was a conduit in seeking help of absconding accused Ravi Poojari, no doubt, by collecting that amount from the builder. The confessional statement of appellant/accused no.3 Parvez Shaikh further shows that it was agreed between the accused persons that after pressurizing the First Informant to surrender his commercial premises in favour of the builder i.e. accused no.5 Faizal Vadgama and on completion of redevelopment work, one flat was to be provided to accused no.1 Tariq Siddiqui and all arrangements of residence of accused no.4 Yusuf Bachkana in some foreign country, was to be made by the builder. The charge-sheet reveals that apart from meeting at Mysore with co-accused Yusuf Bachkana and Abdullah Ahmed @ Baba, the accused persons were also meeting at Mumbai.

8 During the course of investigation, the Investigator has collected CDR showing presence of appellant/accused no.3 Parvez Shaikh at Mysore, at the relevant period of meeting with the co-accused, either at Mysore jail or at the hospital at Mysore. The

Investigator has also collected to and fro air tickets of the appellant/accused no.3 along with the co-accused from Mumbai to Mysore and Mysore to Mumbai. Transcript of intercepted conversation between the accused persons including the appellant/accused no.3 is also prepared during the course of investigation. The learned APP has pointed out that the organized crime syndicate is headed by absconding accused Ravi Poojari, who has taken shelter in some foreign country and he is a wanted accused in 51 similar cases.

9 The cumulative effect of the material collected during the course of investigation points out that the appellant/accused no.3 was a member of the organized crime syndicate and he had participated in the crime in question by targeting the First Informant with illegal demand and extortion connected with the project of redevelopment of Sutarwala Chawl. The accused persons, including the appellant/accused no.3, are seen to have pressurized the First Informant to vacate and handover possession of commercial premises having estimated value of Rs.64 Crore in

favour of the builder i.e. accused no.5 Faizal Vadgama at paltry sum of Rs.4 Crore. The appellant/accused no.3 is seen to have abetted and knowingly facilitated the commission of the organized crime by hiring services of the co-accused for bringing the First Informant to the terms and for succumbing to the wishes of the builder. Therefore, it cannot be said that there is not sufficient ground for proceeding against the appellant/accused no.3 for the offences alleged against him. He cannot take aid of the finding given by this court while releasing him on bail for getting discharge from the offences alleged against him.

10 In the light of above discussion, no infirmity can be found in the impugned order rejecting the application for discharge of appellant/accused no.3 Parvez Shaikh, so also that of framing of the Charge against him. The appeal, as such, is devoid of merits, and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.) **(INDRAJIT MAHANTY, J.)**