

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 398 OF 2021

LAWRENCE S/O DORAI SWAMY
VERSUS
THE STATE OF HARASHTRA AND ANOTHER

...

Ms.Pradyna Talekar for Talekar and Associates
for the petitioner

Mr.R.V. Dasalkar, APP for the
respondent/State.

...

CORAM : RAVINDRA V.GHUGE
AND
B.U.DEBADWAR,JJ.

DATE : 24th March, 2021

PER COURT :-

1. The petitioner herein has put-forth
prayer clause "A", "B" and "C" as under :-

"A. The Record and Proceedings in
Application be called from the
report filed by SDPO dated
30.12.2020 in crime no.2827 of 2020
u/s 395, 397, 324, 323, 504, 506(2),
120B of IPC 4 and 25 of Arms Act and
3(1)(ii), 3(2) and 3(4) of MCOC Act;

B. To quash and set aside the

impugned order dated 09.03.2021 passed below the report filed by SDPO dated 21.01.2021 in Crime No.2827 of 2020 u/s 395, 397, 324, 323, 504, 506(2), 120-B of IPC and section 4/25 of the Arms Act, and under section 3(1)(ii), 3(2) and 3(4) of the MCOC Act, granting permission to arrest the petitioner, by issuing a writ of certiorari or any other writ order or direction as the case may be;

C. To quash and set aside the impugned order dated 15.02.2021 passed by the Ld. Addl. Sessions Judge, Ahmednagar below objection petition filed by petitioner challenging maintainability of the report filed by SDPO dated 21.01.2021 in crime no.2827 of 2020 u/s 395, 397, 324, 323, 504, 506(2), 120B of IPC 4 and 25 of Arms Act and 3(1)(ii), 3(2) and 3(4) of MCOC Act in respect of grant of permission to arrest the accused Lawrence Durai Swamy and for his custody, by issuing a writ of certiorari or any

other writ, order or direction as the case may be;"

2. By the impugned order dated 09.03.2021, the learned trial Court has accepted the report filed by the SDPO, dated 21.01.2021 and has granted permission to arrest the petitioner - accused. An application filed by the petitioner challenging the maintainability of the report filed by the SDPO, dated 21.01.2021, has been rejected by the learned trial Court by an earlier order dated 15.02.2021.

3. We have considered the strenuous submissions of the learned Advocate for the petitioner Ms. Talekar and the learned Prosecutor on behalf of the respondents. Ms. Talekar requests that her notes of arguments dated 24.03.2021, may be considered. With the assistance of the learned Advocates, we have gone through the voluminous record placed before us.

4. The record indicates that the F.I.R. was registered on 21.11.2020, at 2.00 a.m. (early morning). Sections 395, 397, 324, 323, 504 and 506 (2) r/w section 120-B of the

I.P.C. and sections 4 and 25 of the Arms Act, were invoked. The informant is said to be an injured person, who claimed that the driver of the present petitioner was present when the offence of dacoity had taken place. The driver Arjun Thube was arrested on 24.11.2020. Since the Investigating Agency noticed that Arjun Thube had spoken to the petitioner herein prior to the dacoity, that a large Police force reached the residence of the petitioner around 6.00 a.m. on 09.12.2020 and arrested him.

5. We are not required to refer to the long history of litigation initiated by the petitioner in view of the Police Department having registered several offences against him. The provisions of the MCOC. Act were applied to the case of the petitioner on 25.12.2020 after he was granted bail on 23.12.2020 in the F.I.R. No.2827/2020. Despite the bail having been granted, the petitioner was not released since the Police registered another new case against him, immediately and arrested him.

6. The issue before us in this Petition is as to whether the trial Court has

committed any error in granting leave to the Investigating Officer to arrest the petitioner.

7. The petitioner had been before this Court in Criminal Appeal No.8/2021 for challenging the permission to arrest granted by the Special MCOC Court, when bail was granted to the petitioner by the Additional Sessions Court prior to the MCOC Act being made applicable. Since both the parties had relied upon the judgment delivered by the Hon'ble Apex Court in the matter of ***Pradeep Ram V/s State of Jharkhand and another (2009) 17 SCC 326***, we had scrutinized the earlier order of the Special Court impugned in the said appeal while delivering our order dated 19.01.2021. We allowed the appeal and set aside the order dated 31.12.2020 passed by the Special Court and remitted the matter. We noted in our order that as the petitioner was under arrest and in police custody for 20 days and the maximum period for P.C.R. under the provisions of the MCOC Act is 30 days, that the petitioner would be entitled for a set off. We are now informed that the petitioner had actually spent 27 days in P.C.R.

8. The SDPO Shevgaon Division, Ahmednagar had approached the Special Court for seeking leave to arrest the petitioner. As noted above, since the Special Court as well as the Additional Sessions Judge's Court, were presided over by the same learned Judicial Officer, that we had quashed the earlier order passed by the Special Court and had directed that the report of the SDPO be placed before the Additional Sessions Judge who had granted bail to the petitioner. It is in this background that the impugned order dated 09.03.2021 was passed granting leave to the SDPO to arrest the petitioner.

9. The learned Prosecutor has vehemently opposed this petition and we considered his submissions and those put-forth by the petitioner, on 16.03.2021, 19.03.2021, 22.03.2021 and 23.03.2021. He contends that the I.O. desires to take recourse to Section 18 of the MCOC Act for recording the confessional statement of the petitioner. So also, 17 points have been formulated by the I.O. owing to which the custodial interrogation of the petitioner is necessary.

10. Section 18 of the MCOC Act reads thus:-

"Section 18. Certain confessions made to police officer to be taken into consideration

(1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any mechanical devices like cassettes, tapes or sound tracks from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator.

Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made

voluntarily. The concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person from whom a confession has been recorded under sub-section (1) shall also be produced before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Metropolitan Magistrate or the Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than of an Assistant Civil Surgeon."

11. By this petition, we are testing the

legality and validity of the order passed by the learned Additional Sessions Judge permitting the SDPO to arrest the accused. While doing so, we cannot ignore the fact that the petitioner was attending the concerned Police Station thrice a week from 20.01.2021 and was waiting in the Police Station from 11.00 a.m. to 2.00 p.m. Such attendance continued for six weeks. Prior thereto, he was in Police Custody remand from 02.01.2021 till 20.01.2021 when he was granted bail for the second time, the earlier occasion being on 23.12.2021. Such attendance continued for six weeks and the Court below modified the order on 03.03.2021 mandating the attendance of the petitioner on each Monday, once a week.

12. The contention on behalf of the I.O. before the learned Sessions Judge for seeking permission to arrest, was based primarily on a solitary ground as is noted in paragraph 11 of the impugned order, which is "*only to record the confessional statement of the accused as per section 18 of MCOC Act, the I.O. has filed this report for grant of permission to re-arrest.*" In addition to this ground, the I.O. has stated that, there are

17 points prepared by him which require him to interrogate the petitioner.

13. We find that these 17 points were already formulated by the I.O. when the permission to arrest the petitioner was sought earlier and which was granted by the Special Court, though without jurisdiction, vide the order dated 31.12.2020 which we have set aside earlier. Pursuant thereto, the petitioner was in P.C.R. from 02.01.2021 till 20.01.2021 when the MCOC Act was already made applicable to him on 25.12.2020.

14. Considering the contentions of the petitioner that he is being persecuted under the influence of influential politicians since he was receiving contracts for collecting Toll, that we have scrutinized the contention of the learned Prosecutor as regards the 17 points which have been formulated as a part of investigation. For 19 days, the petitioner was in P.C.R. after the provisions of the MCOC Act were made applicable. It is informed that he was made to sit in police station for hours.

15. The learned Prosecutor frankly

submits that, the process of interrogation of an accused does not mandate noting of the minutes/details of the interrogation and the case diary would not disclose as to how the petitioner was interrogated by the I.O. We are of the view that 19 days in P.C.R. were sufficient for the I.O. to interrogate the petitioner on his 17 points.

16. The impugned order indicates from paragraph 24 and 25 that the learned Additional Sessions Judge has granted leave to re-arrest the petitioner so that the 17 grounds could be investigated and a confessional statement under section 18 could be recorded.

17. On 19.03.2021, the learned Prosecutor had sought time to take instructions from the I.O. as to whether a confessional statement is sought to be extracted from the petitioner. The petitioner made a specific statement before us that he does not desire to record any confessional statement and he has not committed any act/offence which he desires to confess.

18. On 22.03.2021, the I.O. Shri

Annasaheb Jadhav, was present in the Court and he instructed the learned Prosecutor to make a statement that the Police will not extract a confessional statement from the petitioner since he has no desire to make such statement. It requires no debate that a confessional statement can be recorded under section 18 (2) only in a free atmosphere. Sub-Section 3 indicates that an accused is not under an obligation to make a confession. It is also provided that if such a confessional statement is made, the same can be used not only against the person making the confession, but even against the co-accused.

19. We find from the impugned order that in more than 10 pages out of the 12 pages of the order, the trial Court has exerted for recording the lengthy details of the submissions of the parties and for considering the citations. The analysis of the citations end with paragraph 25 of the impugned order, on page 11. In the short second last paragraph no.26 on page 12, the trial Court has made an observation that *"however, in the present matter, the trial is yet to be conducted. The present matter, is*

at the initial stage of investigation. So, the above observations" (citations referred to by the learned Judge) "are made on decision of trial and therefore, cannot be made applicable in the present case. So, the case law is not applicable in the present matter." As such, the trial Court then proceeded to draw it's conclusion in a single sentence in paragraph 27 which is, "in view of the above discussion, the permission is granted to Investigating Officer to arrest the accused."

20. We cannot appreciate that the learned Judge has drawn her conclusion in a single sentence without taking into account the fact that the petitioner was in P.C.R. for 19 days after the MCOC Act was applied. The learned Judge has failed to know that these 19 days should have been utilized by the I.O. for getting answers to the 17 points, from the accused. So also, if a confessional statement was to be extracted "in a free atmosphere", this could have been done in the said 19 days period. It is also a matter of record that the co-accused in the crime were in P.C.R. and the I.O. has not recorded any confessional statement from any

of them.

21. Now that the petitioner has declared before this Court that he does not desire to record any confessional statement and keeping in view the statement made by the learned Prosecutor on instructions from the I.O. that he does not intend to record a confessional statement, we find that there is no reason to detain the petitioner in P.C.R. for custodial interrogation. So also, even if we permit custodial interrogation, it would be only for a period of three days as the petitioner was already in P.C.R. for 27 days.

22. In view of the above, this Petition is partly allowed. The impugned order dated 09.03.2021 granting permission to arrest the petitioner in crime no.2827/2020, is quashed and set aside.

23. Since we have earlier recorded the statement of the petitioner that he is willing to cooperate in the investigation and is willing to attend the Police Station on any number of days and for any duration as the I.O. may deem appropriate, that we direct the petitioner to attend the Bhingar Camp

Police Station, Ahmednagar on every Monday and Tuesday, which includes his attendance on each Monday pursuant to the order of the learned Sessions Judge. He shall make himself available for interrogation from 11.00 a.m. till 3.00 p.m. on each of these two days, until the trial before the Special Court commences in Crime No.2827/2020.

24. The earlier condition that, he would not leave the limits of the Ahmednagar district without written intimation, with the exception of leaving the district once a week, will continue.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)

SGA