IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPEAL NO. 104 OF 2020

Shri Arif Riyaz Ghodeshwar
Age-22 years, Indian Inhabitant,
R/at House No. 66A, Shaniwar Peth,
Near Pangal Masjid, Solapur Market,
Solapur. .. Appellant

Vs.

The State of Maharashtra
Through Inspector Incharge,
Khadki Police Station .. Respondent

Mr. A. M. Saraogi i/b Mr. Vaibhav V. Ugle for the Appellant.
Mr. J. P. Yagnik, APP for the Respondent-State.

CORAM : S. S. SHINDE & MANISH PITALE, JJ.

Judgment reserved on : 22nd FEBRUARY, 2021.
Judgment pronounced on : 19th MARCH, 2021.

JUDGMENT *(Per Manish Pitale, J.)*

1. This is an Appeal filed under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA). The Appellant is one of the accused persons against whom offences have been registered as per FIR No. 80 of 2017, whereby offences under Sections 302,143, 144, 147, 148, 149 of the Indian Penal Code as also Section 4 of the Arms Act and Sections 3(1)(i)(ii), 3(2), 3(4) of the MCOCA have been registered, apart from offences under the Bombay Police Act.

2. The incident leading to registration of FIR occurred on 31.03.2017. It is alleged that the Appellant and other accused persons assaulted the victim by means of swords, sickles and choppers, thereby causing extensive

injuries on the body of the victim. The assault led to death of the victim. Post-mortem report records as many as 19 injuries on the body of the victim, including severe injuries on vital parts of the body like head and neck. The cause of death is recorded as hemorrhage and shock due to chop injuries.

3. The statement leading to registration of FIR was given by one of the associates of victim who was present at the time of incident, but he escaped the assault carried out by the accused persons. The Appellant and other accused persons were arrested. The Appellant has been in custody since 04.04.2017.

4. The Appellant moved application for bail before the Court of Special Judge under MCOCA at Pune. It was claimed that the presence of the Appellant at the time of incident was not established by the material on record and that since no overt act was not attributed to him, his involvement in the crime was not demonstrated by the material on record. It is further claimed that the MCOCA had been wrongly applied to the Appellant. But, by the impugned order dated 27.08.2018, the aforesaid Court rejected the Application for bail. The present Appeal has been filed challenging the said order.

5. Mr. A. M. Saraogi, learned Counsel appearing on behalf of the Appellant submitted that the name of the Appellant was not specifically stated in the FIR. His name was subsequently added. The statements of the Complainant and other witnesses did not attribute any overt act to the Appellant and therefore, there was hardly any material on record to indicate

the involvement of the Appellant in the incident in question. It was further submitted that MCOCA was wrongly applied to the Appellant as he had no criminal antecedents and he was, in fact, resident of Solapur. It was further submitted that the Appellant was roped in, only because he is son-in-law of accused No.1. On this basis, it was submitted that the Appeal deserved to be allowed and the Appellant deserved to be enlarged on bail.

6. On the other hand, Mr. Yagnik, learned APP opposed the contentions raised on behalf of the Appellant. It was submitted that the presence of the Appellant was established on the basis of material available on record. Since the present case is concerned with activities of an unlawful assembly, material to show presence of the Appellant for sufficient. It was further submitted that the question as to whether the MCOCA was properly applied or not could not be decided at this stage and since the Appellant was part of an unlawful assembly which caused the death of the victim in a brutal manner, the present Appeal did not deserve favourable consideration.

7. Heard learned Counsel for the rival parties and perused the material on record along with Appeal memo, copy of the charge-sheet and documents filed therewith. Although, name of the Appellant does not appear to be mentioned specifically in the FIR, yet it is stated that the accused persons named in the FIR along with their associates had assaulted the victim causing severe injuries. It is significant that the auto rickshaw in which the assailants reached the spot of the incident and in which weapons were kept, was recovered from the custody of the Appellant.

8. The statement of witnesses indicate that the Appellant was present

along with other accused persons at the spot of incident and since the present case is concerned with criminal activities undertaken by the unlawful assembly of which the Appellant, *prima facie*, was a member, it cannot be said that there is no link established between the Appellant and the aforesaid incident. Once the presence of the Appellant even, *prima facie*, stands established, he cannot claim benefit of the fact that he was not specifically named in the FIR. It is a settled position of law that the FIR is not an encyclopedia about the facts pertaining to the incident in question and that it is a report which triggers investigation into a crime. In the present case, upon investigation, it was found that the Appellant was also part of the unlawful assembly and therefore he was arrested on 04.04.2017. Apart from this, confession statement of co-accused also names the Appellant, which is a significant aspect in so far as applying MCOCA is concerned.

9. The contentions raised on behalf of the Appellant that MCOCA could not have been applied in so far as he was concerned, cannot be gone into at this stage while considering the question of entitlement of the Appellant for grant of Appeal. At this stage, the material on record needs to be perused to ascertain whether it can be said that the Appellant was, *prima facie*, involved in the incident. As noted above, the material on record which we have perused, demonstrates *prima facie* that the Appellant was present at the time of incident. The offences are serious in nature and the victim was brutally assaulted leading to his death. The genesis of the incident appears to be gang-war between two gangs operating in the area where the incident

occurred.

10. In this situation, it cannot be said that the Appellant has made out a case in his favour for grant of bail. We have found from the material on record that the prosecution intends to examine 61 witnesses at the stage of trial.

11. In view of the above, we are not inclined to accept the submissions made on behalf of the Appellant and therefore the Appeal stands dismissed.

12. The Court below is expected to frame the charge, if not already framed, at the earliest and to complete the process of trial as expeditiously as possible. Needless to say, the observations made in this order are for the limited purpose of deciding this Appeal concerning the question of bail.

Arjun M. Kadam
Digitally signed by Arjun M. Kadam
Date: 2021.03.20 13:00:02 +0530

[MANISH PITALE, J.] **[S. S. SHINDE J.]**