IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 464/2021

(Mukesh Wasudeo Dekate Vs. State of Maharashtra)

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders
	Shri Devendra V. Chauhan, Advocate for applicant along with Shri C. B. Barve, Advocate & Shri G. S. Gour, Advocate for appicant. Shri M. J. Khan, APP and Shri H. D. Dubey, APP for State.

CORAM :VINAY JOSHI, J.
CLOSED FOR ORDER :30.08.2021
DATE OF PRONOUNCEMENT : :01.10.2021

Heard.

2. This is an application in terms of Section 438 of the Code of Criminal Procedure, for grant of pre-arrest protection in Crime No. 39/2021 registered with the Police Station Dhantoli, Nagpur for the offence punishable under Sections 323, 364-A, 384, 386, 504, 506 read with Section 34 of the Indian Penal Code, Sections 43, 44, 45, 46 of the the Maharashtra Money-Lending (Regulation) Act, 2014 and Sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act, ('MCOC Act').

3. One Mohan Eknath Dani lodged report dated 06.02.2021 on the basis of which, initially crime was registered under the provisions of the Indian Penal Code and Maharashtra Money-Lending (Regulation) Act, 2014 ('Act of 2014'). Latter on, the provisions of the MCOC Act have been invoked by obtaining prior approval in terms of Section 23(1)(a) of the MCOC Act. The papers of investigation along with prior approval has been forwarded to the Additional Director General of Police, Nagpur for grant of prior sanction under Section 23(2) of the MCOC Act. On perusal of the investigation paper, the Additional Director General of Police has granted prior sanction vide its order dated 09.07.2021.

4. Initially, applicant Mukesh Dekate has applied for pre-arrest bail to the Special Court, however said application was rejected vide order dated 19.07.2021. In turn, this is an application for grant of pre-arrest protection.

5. Informant Mohan was indulging into construction and development of real estate business. It is his case that somewhere in the year 2010, he was in financial need, hence he initially borrowed rupees two lakhs from co-accused Madan Kale and Mahesh Sabane on interest. Latter on, time to time, the informant borrowed a total sum of rupees six lakhs from co-accused on interest. Over the period of time, co-accused started to insist informant to pay a huge sum towards interest. The informant paid substantial amount, however they continued to insist for money.

6. Somewhere, in the month of May 2013, co-accused Rakesh Dekate (Gang Leader) threatened informant for paying huge sum of rupees one crores. Then in the year 2014, other co-accused including Gang Leader Rakesh Dekate abducted informant and took him to the office of applicant Mukesh. All of them abused informant, beat him and by giving life threats insisted for

monetary demand. Again in the month of May 2017, the informant was once again forcibly taken to the office of applicant – Mukesh situated at Ghat Road, Ganeshpeth, Nagpur. The informant was threatened, beaten and forcibly obtained his signature on 50 blank stamp papers and took blank signed cheques from him.

7. The informant stated that on 18.05.2018, the accused forcibly got executed sale-deed of his land in the name of applicant Mukesh in throw away price. A farce of payment of consideration towards sale was created. It was followed by forcibly taking possession of informant's house. Thereafter, informant was pressurized to execute sale-deed of house property. Finally on 02.02.2021, all accused including applicant Mukesh went to the house of informant and threatened him by raising monetary demand. Since the informant has called the Police, all of them fled. On the basis of aforesaid report, crime was registered.

8. Learned counsel for the applicant would submit that there is no prima facie material to show the involvement of applicant in organized crime syndicate. Precisely, he would submit that the provisions of MCOC Act, cannot be invoked against the applicant. It is submitted that the alleged incident cannot be termed as part of "continuing unlawful activity" within the meaning of Section 2(d) of the MCOC Act, since the essential requirement of filing of more than one charge-sheets has not been complied.

9. Learned APP put strong resistance to this application vide reply-affidavit dated 09.08.2021. Besides factual aspect, the State has challenged the very maintainability of this application for pre-arrest bail. Learned APP would submit that there is complete bar to the applicability of the provisions of Section 438 of the Code of Criminal Procedure, in view of Section 21(3) of the MCOC Act. Besides that, he took me through the contents of police report and some

statements to impress that the applicant was a member of organized crime syndicate headed by his brother Rakesh Dekate and they are indulging in commission of extortion by threatening.

10. On the point of maintainability, learned counsel for the applicant would submit that, if prima facie case is not made out against the applicant about his involvement in organized crime, then anticipatory bail can be granted despite statutory bar. In this regard, he would submit that similar statutory bar is created under provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, however the Supreme Court in case of **Prathvi Raj Chauhan Vs. Union of India and others, (2020) 4 SCC 727** ruled that when prima facie case is not made out, the Court can grant pre-arrest protection. It is canvased that provision of Section 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is pari materia to the bar created under Section 21(3) of the MCOC

Act and therefore, the principle laid down in above cases, would squarely apply. So also, on the same point, he placed reliance on the decision in case of **Rahana Jalal Vs. State of Kerala and anr., (2021) SCC 733** which reiterates said position.

11. On the other hand, learned APP would submit that while interpreting the provisions of law, intention of legislature should be considered. When the language used in the statute is clear and unambiguous, there could be no departure. Moreover, he would submit that it is well established canon and rule of construction that Court should read the Section as it stands and cannot re-write to suit his convenience. In support of said contention, he relied on the decision in cases of **Bhihari Chudhari Vs. State of Bihar, 1984 Law Suit SC 89, State of Maharashtra Vs. Jagan Nepali and ors. 2011(5) Mh.L.J. 386** and **A. R. Antulay Vs. Ramdas Naik, 1984 Law Suit SC 44.**

12. In response, learned counsel for the applicant would submit that the Division Bench of this Court in Writ Petition No. 1959/2021(Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra) decided on 13.08.2021, has considered the position and was pleased to lift statutory bar. The relevant portion is extracted herein below:-

> *"20. This propels us to the consideration of the prayer of the petitioner to exercise the discretion to grant pre-arrest bail. Once we record a prima facie satisfaction that the invocation of the provisions under MCOC Act qua the petitioner is not justifiable, then the embargo under Section 21(3) of the MCOC Act may not come into play and the entitlement of the petitioner for the grant of the relief of pre-arrest bail would hinge upon considerations which generally weigh in the exercise of the discretion to grant pre-arrest bail."*

In the light of above position it is not possible to accept the contention of State that the prayer of grant of pre-arrest bail cannot be considered at all. If applicant is able to prima facie satisfy that the provisions of MCOC Act would not apply against him, then his entitlement has to be tested on other considerations.

13. Reverting to the facts, it is the prime contention that the provisions of MCOC Act cannot be invoked against the applicant. It is submitted that the applicant has already challenged the prior approval granted under Section 23(1)(a) of the MCOC Act in Criminal APPL No. 478/2021 which is subjudice. He would contend that in order to invoke the provisions of MCOC Act, there must be existence of two or more prior charge-sheets filed before the competent Court of which cognizance has been taken.

14. Learned counsel for the applicant attracted my attention to the crime chart (page 221) to convince his point. The crime chart of all the accused indicates that total 27 crimes were registered against them at different Police Stations. Mostly all those 27 crimes were registered against Gang Leader Rakesh Dekate singularly or jointly with some other accused.

15. It is pointed that crimes at Serial No. 1 to 20 are preceding to ten years, hence are of no case. It is submitted that only Crime No. 95/2021 (Sr. No. 21) was jointly registered against Gang Leader Rakesh Dekate and applicant Mukesh for offence punishable under Sections 397 and 427 of the Indian Penal Code. It is submitted that though one other crime No. 428/2019 (Sr. No. 24) was registered at Pratap Nagar Police Station under Sections 386, 387, 323, 504 of the Indian Penal Code jointly against both of them, however, by virtue of order of this Court, yet its cognizance was not

taken by the Court. In short, he would submit that there is only one crime jointly registered against both of them i.e. Crime No. 95/2012 at Ambazari Police Station and therefore, essential requirements to invoke the provisions of the MCOC Act are not made out.

16. Learned counsel for the applicant to elaborate the issue, submits that Section 2(1)(d) of the MCOC Act defines the term "continuing unlawful activity". It requires that an activity can be a continuing unlawful activity, if it is prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organized crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

17. He would submit that besides only one prior charge-sheet within the span of last 10 years, no other charge-sheet is filed against the applicant except the present which cannot be taken into account. Therefore, he would submit that the provisions of the MCOC Act could not have been made applicable against the applicant.

18. Per-contra, learned APP would submit that the requirement under Section 2(1)(d) is of registration of more than one charge-sheet against the organized crime syndicate and not against individual member of the organized crime syndicate. He would submit that if within a period of preceding 10 years, charge-sheet has been filed in respect of organized crime committed by the member of a syndicate, the said charge-sheet can also be taken against other members of the said organized crime syndicate for the purpose of application of MCOC Act against him.

19. In order to support their respective contentions, both relied on the decision of this Court in case of **Govind Sakharam Ubhe Vs. the State of Maharashtra, 2009, SCC Online Bom 770**. In said case, a similar issue fell for consideration before this Court. This Court by referring its earlier decision in case of Asif Khan Bashir Khan Vs. the State of Maharashtra has observed that the words "more than one charge-sheet" contained in Section 2(1)(d) of the MCOC Act refers to unlawful activities of the organized crime syndicate. Requirement of more than one charge-sheet is qua the unlawful activities of the organized crime syndicate and not qua individual member thereof. Therefore, there is no necessity to have more than one charge-sheet against individual member but would suffice if at least two prior charge-sheets were filed against the organized crime syndicate.

20. Learned counsel for the applicant would submit that there should be nexus between those prior offences with the activities of organized crime syndicate. In this regard, he relied on the decision of this Court in case of **Deepak Madhavrao Mankar Vs. State of Maharashtra with connected matter, 2019 SCC Online Bom 8036**, in which it is observed that mere filing of more than one charge-sheet is not enough unless it qualifies the requirement. The crime chart indicates that one other prior charge-sheet under Sections 392, 384, 506 of the Indian Penal Code, Sections 39, 41, 42 of the Act of 2014 vide Crime No. 350/2015 was registered against the Gang Leader at Ajani Police Station. The said charge-sheet was in respect of cognizable offence punishable with imprisonment of more than three years and relates to gaining pecuniary benefits or undue economic advantage. The said charge-sheet prima facie can be taken into account being a

continuing unlawful activities undertaken singly as a member of organized crime syndicate. Therefore, there is no force in the contention that on said technical ground invocation of MCOC Act is untenable.

21. The contents of First Information Report (FIR) discloses that the applicant has taken active part in continuing unlawful activities and commission of organized crime on behalf of the syndicate headed by Rakesh Dekate. It is specifically stated that the informant was taken to the office of the applicant where he was threatened for money and by putting him under threat, got executed sale-deed of landed property. Prima-facie said material indicates applicant’s active involvement. Already the prior approval and sanction to prosecute the applicant under the provisions of MCOC Act has been granted by the appropriate authority. In the circumstances, it would suffice to say that there

exist prima facie material to show involvement of applicant as a member of organized crime syndicate and about applicability of the provisions of the MCOC Act. In view of that, the applicant is not entitled for grant of pre-arrest protection, hence application stands rejected and disposed of.

JUDGE

Gohane.