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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.324 OF 2021

Abdul Mehboob Shaikh ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Vaibhav R. Gaikwad with Mr. Yash Naik, for Applicant.
Mrs. P.N.Dabholkar, APP, for State.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 28th JUNE, 2022
PRONOUNCED ON : 6th JULY, 2022

P.C.

1. This is an Application for bail in C.R.No.279 of 2017 registered with Shirwal Police Station, Pune. The Applicant has been arraigned in the above numbered crime along with the co-accused Amit @ Birya Ramesh Kadam (Accused No.1) and Vishal @ Babu Mahadev Chavan (Accused No.2) for the offences punishable under Sections 387, 427, 435, 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(ii) and 3(2)(4) of the Maharashtra Control of Organized Crime Act, 1999 (the MCOC Act).

2. The indictment against the Applicant is as under :

Nikhil Ramdas Deshmukh (first informant) deals in the business of builders and developers. The first informant started a unit to manufacture concrete blocks under the name and style of Sneh Buildcon at Gat No.171, Tal. Khandala, by obtaining the said land on lease from Mr. Sachin Kadam. Two months prior to the occurrence, Amit Kadam (Accused No.1), Nitin Salunke, Abdul Shaikh, the Applicant, and Vishal Chauhan came at the said site. They demanded a contract of PCC work (concretisation) after levelling of the land. After 2-3 days thereof, the Applicant visited the site and told the informant that he was sent by Accused No.1 Amit and the contract be awarded at the earliest so that the issue is not escalated. Three weeks thereafter, the Applicant and the co-accused again visited the site and demanded the work contract. The accused No.1 Amit Kadam threatened the first informant to either give the work contract or pay Rs.50,000/- per month, lest the first informant would not be allowed to carry on the business activity from the said premises. The first informant refused to cave in to the demand of the Accused. Thereupon, the Accused No.1 allegedly gave threat to eliminate the first informant.

3. On the night intervening 22nd November, 2017 and 23rd November, 2017 the Accused No.1 Amit Kadam came to the site accompanied by the three associates. They threatened the watchman – Abdul. The watchman got scared. The Accused No.1 Amit Kadam and his three associates broke the wind shield of JCB, stationed thereat. They entered into a room besides the shed. They set the fabrication, electrical and other articles lying thereat on fire, by pouring the colour from the boxes. A couple of hours after they left the premises, the watchman went thereat and found that the fabrication and electrical articles were burnt. The Accused had also uprooted

12 iron poles which marked the boundary of the premises. The said watchman called the first informant on the morning of 23rd November, 2017 and thereupon the first informant lodged the report.

4. The investigation revealed that the accused No.1 Amit Kadam was the leader of the organized crime syndicate of which the Applicant and other co-accused were members. The Applicant and the other co-accused indulged in continuous unlawful activities. Thus, with the prior approval of the competent authority under clause (a) of sub-Section (1) of Section 23, the provisions contained in MCOC Act, 1999 were invoked. In the meanwhile, the Applicant and the co-accused were arrested.After completion of investigation, sanction was granted by competent authority under sub-Section (2) of Section 23 of the MCOC Act. The cognizance has, thereafter, been taken by the Special Court.

5. The Applicant has preferred this Application for bail on the ground that the invocation of the provisions contained in Section 3 of the MCOC Act, against the Applicant is infirm. There is no material to indicate that the Applicant has indulged in continuous unlawful activity. Apart from the offence punishable under Section 122(a) of the Maharashtra Police Act, 1951, there was no crime to the credit of the Applicant. In substance, there is not an iota of material to show that the Applicant is a member of the organized crime syndicate. It is further asserted that the identity of the Applicant as one of the associates of Accused No.1 cannot be also said to have been prima facie

established. The Applicant has been arrested on 23rd November, 2017. It is very unlikely that the trial would be completed within a reasonable time. Hence, the Applicant deserves to be enlarged on bail.

6. An Affidavit in Reply is filed on behalf of the Respondent-State. The application is resisted on the ground that there is material to show that the Applicant played an active role in the offences for which the Applicant and the co-accused have been arraigned. Controverting the contention of the Applicant that there is no material to show the involvement of the Applicant, reliance is sought to be placed on the statement of Abdul, the watchman, and Daulat Shaikh, the uncle of the Applicant recorded under Section 164 of the Code of Criminal Procedure, 1973 and the memorandum of TI Parade, in which the said watchman Abdul had identified the Applicant. It was further submitted that the antecedents of the Applicant indicate that a crime has been registered against the Applicant under Section 122(a) of the Maharashtra Police Act, 1951, at Shirwal Police Station at C.R.No.22 of 2017. Since a number of offences have been registered against the Accused No.1, the leader of the organized crime syndicate, it cannot be said that the Applicant is not a member of the said syndicate.

7. I have given my anxious consideration to the rival submissions.

8. First and foremost, the applicability of the provisions contained in MCOC Act, 1999 is required to be considered as the question of the applicability of

the interdict contained in Section 21(4) of the MCOC Act, turns on the said aspect. Clause (b) of sub-Section (4) of Section 21 provides an additional bar against the release of a person accused of offence punishable under MCOC Act, 1999 unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offences and that he is not likely to commit any offence while on bail.

9. From the phraseology of sub-Section (4) of Section 21, it becomes abundantly clear that to invoke the interdict, a person must be accused of an offence punishable under the MCOC Act, 1999. The gravamen of indictment against the Applicant is that he is a member of an organized crime syndicate, led by the accused No.1 Amit Kadam. Clause (f) of sub-Section (1) of Section 2 of the MCOC Act, 1999 defines "organized crime syndicate" to mean "a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organized crime".

10. Clause (e) of sub-Section (1) of Section 2 of the MCOC Act, in turn, defines "organized crime" to mean any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

11. “Continuing unlawful activity” is defined in clause (d) of sub-section (1) of Section 2 of the MCOC Act, 1999 as under :

> “Continuing unlawful activity” means an activity 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”

12. The phraseology of aforesaid clauses would indicate that to fall within the mischief of continuing unlawful activity, it is required to be established that the accused is involved in activities prohibited by law which in turn, are cognizable offences punishable with imprisonment for three years or more and in respect thereof, more than one charge sheets have been filed against such persons before the competent Court within the preceding period of ten years and that the Court has taken cognizance of such offences. Organized crime means any continuing unlawful activity with an object of gaining pecuniary benefit or gaining undue economic or other advantage for himself or any other person or promoting insurgency. A group is designated as an organized crime syndicate if the members of the said group acting either singly or collectively as a syndicate or gang, indulge in activities of organized crime.

13. In the light of the aforesaid fascicles of the provisions, reverting to the

facts of the case, it is imperative to note that in the proposal for obtaining sanction under Section 23(2) of the MCOC Act, 1999, the particulars of the offences registered against each of the accused with details as to whether charge sheet has been lodged and cognizance taken, were furnished. As against the accused No.1 Amit Kadam, as many as 12 crimes were shown to have been registered. In few of those offences, the said accused was acquitted. However, the majority of the cases were sub-judice.

14. Evidently, qua the accused No.1 Amit Kadam, the requirements envisaged by the definition of continuing unlawful activity, seem to have been prima facie satisfied.

15. Qua the Applicant, however, only one crime was registered vide C.R.No.22 of 2017 with Shirwal Police Station for offence punishable under Section 122(a) of the Maharashtra Police Act, 1951, wherein the charge sheet was lodged on 1st September, 2017. The said offence entails punishment which may extend to one year. As against the co-accused Nitin Salunkhe, three offences were registered, two of which were punishable with imprisonment for more than three years.

16. I have carefully perused the particulars of the offences registered against the Accused No.1 Amit Kadam. In none of the offences, the Applicant is shown as the co-accused. The said offences have allegedly been committed during the period 2012 to 2017. Number of associates of Accused No.1 have been shown as the co-accused in those offences. Yet, the Applicant does not figure as one of the co-accused

in any of those offences.

17. The situation which thus obtains is that no offence which would fall within the dragnet of continuing unlawful activity has been registered against the Applicant in his individual capacity. Secondly, in none of the offences registered against the leader of the organized crime syndicate, the Applicant is implicated as the co-accused. I am conscious of the fact that it is not the requirement of the law that more than one charge sheets must have been filed against each member of the organized crime syndicate. However, there ought to be material to indicate that the alleged members of the organized crime syndicate indulged in continuing unlawful activity, either singly or collectively, as a syndicate or gang. From this stand point, in the case at hand, prima facie, the invocation of the provisions contained in the MCOC Act, 1999 qua the Applicant as a member of the organized crime syndicate, appears debatable.

18. This propels me to the incident in question, for which the Applicant has been roped in. The statement of the first informant is of assistance only to indicate the prelude to the occurrence. As regards the core of the occurrence, which took place on the night intervening 22nd and 23rd November, 2017, the first informant claimed that his watchman Abdul apprised him that the Accused No.1 Amit Kadam and his three associates barged into the premises, committed mischief by pelting stones and fire, and damaged the property. The prosecution case primarily rests on

the statement of Abdul, the watchman.

19 Abdul states that on the night of occurrence, four persons barged into the premises. They started to pelt stones and ransacked the premises. One of them with dark complexion was 'Birya', the accused No.1 He claimed to have known him by his name, since last two months. Abdul stated about the mischief by fire committed by accused No.1 and his associates. However, the associates of accused No.1 were neither named nor described by their features

19. The prosecution banks on the memorandum of TI Parade, wherein the watchman Abdul identified the Applicant as one of those four persons. At this stage, the Court is not expected to delve deep into the trustworthiness of the TI parade. However, it is imperative to note that in statement before the police, the watchman Abdul did not disclose the features of any of the three associates of the Accused No.1. For him, apart from Accused No.1, rest of the perpetrators of the offences were unknown persons.

20. Reliance placed by the prosecution on the statement of Daulat Shaikh, uncle of the first informant, recorded under Section 164 of the Code of Criminal Procedure, 1973, does not prima facie seem to advance the cause of the prosecution to the extent desired by the prosecution. The said witness stated that he deals in the business under the name and style of M.J.Construction. A couple of months prior to the occurrence, the Applicant had obtained a quotation of PCC work from him. Later

on, it was learnt that the Applicant and his associates had ransacked the said premises as neither the work was allotted, nor the extortion amount was paid to them. The later part is clearly inadmissible.

21. In the circumstances of the case, in my view, the question of identity of the Applicant as one of the associates of Accused No.1 warrants consideration. It would be contextually relevant to note that the co-accused Vishal Chavan was released on bail by the learned Sessions Judge, albeit for the reason that he was already released on bail and without cancelling the said order Vishal Chavan was again arrested after invocation of the MCOC Act. The learned Special Judge had, inter alia, observed that the applicability of the provisions of the MCOC Act, 1999 was doubtful.

22. The Applicant was arrested on 23rd November, 2018. The Applicant has been incarcerated for more than three years. There is no reasonable prospect of conclusion of trial in immediate future. The antecedents of the Applicant are not such that they would dissuade the Court from exercising discretion in his favour.

23. The upshot of the aforesaid consideration is that in the peculiar facts of the case, the applicability of the provisions of the MCOC Act, qua the Applicant appears debatable and the attendant circumstances as regards the subject offences are such that a prima facie case for exercise of discretion is made out. Hence, I am inclined to release the Applicant on bail. Thus, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Abdul Mehboob Shaikh be released on bail in C.R.No.279 of 2017 registered with Shirwal Police Station, for the offences punishable under Sections 387, 427, 435, 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(1)(ii) and 3(2)(4) of the Maharashtra Control of Organized Crime Act, 1999 (the MCOC Act), on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the learned Special Judge, Pune.

(iii) The Applicant shall mark his presence at Shirwal Police Station on the first day of October, January, April, and July in between 10.00 a.m. to 11.00 a.m., till the conclusion of the trail.

(iv) The Applicant shall furnish his permanent residential address and contact details to the Inspector of Police, Shirwal Police Station, and update the same in case of any change therein.

(v) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional court.

(vii) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

(N.J.JAMADAR, J.)