IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.897 OF 2020

Bhagwan Babu Margale ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Satyavrat Joshi, for Applicant.
Mr. Y.Y.Dabake, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 22nd JUNE, 2022

P.C.

1. The Applicant has preferred this Application to enlarge him on bail. The Applicant is arraigned in C.R.No.415 of 2017 for the offences punishable under Section 394 read with Section 34 of the Indian Penal Code and Sections 3(1)(ii) and Section 3(4) of the Maharashtra Control of Organized Crimes Act, 1999.

2. The indictment against the Applicant runs as under :

On 22nd December, 2017, Kunal Vijay Zaveri, the first informant and his friend, had been to Mulshi dam for an outing. They parked the car on the road side and were taking a stroll alongside the dam. Three persons riding a Honda Shine Motorcycle, bearing Registration No.MH-12/MK-5347, accosted them. They caught hold of the first informant by the collar of his shirt. They assaulted him and robbed him of three mobile phones, silver chain and a wallet containing cash amount, documents, pan card, aadhar card, credit cards etc. The first informant raised alarm.

Robbers fled away. When the first informant approached the police station, another lady Vinubai Kangude had also came thereat to lodge report of robbery. She was robbed of a gold marriage string, ear ring and mobile phone handset. One of the robbers was apprehended by the persons. He was brought to the police station.

3. Mr. Kunal Zaveri, the first informant, identified the said person as the very person who had robbed him as well. The said person was the Applicant. Mr. Prashant Yewale and Mr. Tejas were the alleged co-robbers. The Applicant came to be apprehended. After obtaining prior approval and previous sanction envisaged by Section 23 of the Maharashtra Control of Organized Crimes Act, 1999, the provisions of the Maharashtra Control of Organized Crimes Act, 1999 were invoked. Post completion of investigation, charge sheet has been filed.

4. The Applicant seeks enlargement on bail on the ground that the allegations against the Applicants are sans any evidence and there is no recovery of the stolen property at the instance of the Applicant. The invocation of the provisions contained in the Maharashtra Control of Organized Crimes Act, 1999, is infirm. Since the investigation is complete and the Applicant is in custody since long, the further detention of the Applicant is not warranted.

5. In view of the provisions contained in Section 21(4) of the Maharashtra Control of Organized Crimes Act, 1999, there is an embargo in releasing a person who is accused of the commission of the offences under the said Act. Sub-section (4) of

Section 21 reads as under :

> "(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless -
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> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
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> (b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

6. A bare perusal of the aforesaid provisions would indicate that when an application for bail is made by a person who is arraigned for an offence punishable under the Maharashtra Control of Organized Crimes Act, 1999, the Public Prosecutor must first be given an opportunity to oppose the application and then the twin requirements be satisfied, namely, there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The import of this provision was instructively expounded by the Supreme Court in the case of *Ranjitsing Brahmajeetsing Sharma V/s. State of Maharashtra and Anr.*[1]. The relevant observations of the Supreme Court read thus :

> "44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the

1 (2005) 5 SCC 294

applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

8. On the aforesaid touchstone, reverting to the facts of the case, it has to be seen whether there is adequate material to indicate that the Applicant is a member of organized crime syndicate within the meaning of clause (f) of sub-section (1) of Section 2 of the Maharashtra Control of Organized Crimes Act, 1999. For an answer, it has to be seen whether there is material to show that the Applicant has either singly or collectively indulged in continuing unlawful activities.

9. In clause (d) of sub-section (1) of Section 2, 'continuing unlawful activity' in turn, 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.

10. It would be suffice to note that as many as 11 crimes have been registered against the Applicant. In 9 of the cases, the Courts have taken cognizance. Out of them 9 cases are of robbery and dacoity. The Applicant had been pursuing a course of continuous unlawful activity. No other inference is possible. The Applicant has been designated as a gang leader of the organized crime syndicate.

11. On the aspect of the existence of a prima face case against the Applicant, the Applicant was apprehended, evidently, red handed. The first informant identified

the Applicant under an hour of the occurrence in question. In addition, the Applicant is alleged to have made a confession which is admissible under Section 18 of the MCOC Act, 1999.

12. In the face of this material, it would impermissible to draw an inference that there are no reasonable grounds to believe that the Applicant is not guilty of the offence for which he is arraigned. Resultantly, the interdict contained in Section 21(4) of the Act comes into play with full force and vigor. For the foregoing reasons, the Application deserves to be rejected. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) By way of 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.)