IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2025 OF 2021

Pintoo Sultanali Keswani .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Aabad Ponda, Sr. Advocate for the applicant.
Ms. Veera Shinde, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 6th OCTOBER, 2022

P.C:-

1 The applicant came to be arraigned as original accused no.10 in Special Case (MCOC) no.500 of 2021, arising out of C.R.No. 50 of 2015, which invoke offences punishable under sections 461, 427, 285, 411, 395, 465, 467, 468, 471, 420 r/w 34 of IPC, with section 15 (2) of the Petroleum and Mineral Pipeline Act, 1962 and section 3 of the Prevention of Damage to Public Property Act, 1894.

2. The Investigating Machinery was set into motion when a complaint was filed by Senior Manager in Bharat Petroleum Corporation Ltd, that there is an oil leakage at a particular location in the Dockyard in Mumbai and, it should verify whether the pipeline belongs to BPCL. On tracking the said source of leakage, it was noticed that one inch plastic pipe passing towards the main pipeline of the company came to be

inserted, amounting to pilfering the oil of BPCL.

This resulted in the offence being registered and, from one of the accused, the role was attributed to the applicant as purchaser of the stolen oil.

3. Apprehending his arrest and alleging his false implication, he approached the Sessions court seeking protection from arrest. On 12/1/2016, his application was allowed by recording as under:

"8. I have gone through the record of this application. It is not alleged by the prosecution that this applicant has any active role in committing theft of oil. However, from the information received from the arrested accused, police have made allegation against the present applicant that he has purchased the stolen oil from the main accused. However, there is nothing on record. The only allegation is about purchase of oil from the main accused. Hence in such circumstances, I am of the opinion that the custodial interrogation of this applicant is not at all required. Applicant is ready to co-operate to the police. There is no question of absconding as the applicant is the permanent resident of Mumbai. There is no question of even tempering of the prosecution evidence, as the witnesses are the Government employees."

4. With this protection from arrest being conferred on him and enjoying his liberty, the applicant was required to travel abroad for certain personal reasons revolving around his family,

he could not return back to India. He also did not report to the Police Station as directed, however in February 2021, while he was residing in Surat, Gujarat, he was asked to report to the Police Station and he came to be arrested on 3/02/2021 and, the prosecution allege that the applicant went absconding despite being arraigned as an accused in Special MCOC case.

5. The submission of the applicant, through the learned Senior Counsel Mr. Ponda is that he was unaware that, provisions of MCOCA has been invoked as when he was released on bail by the Sessions Judge on 12/01/2016, he was accused of only IPC offences and the only mistake committed by him was that he left the country and was trapped in circumstances and could not return. He was under the bonafide impression that since there is a protection, unless and until he receives any summons from the court, he is not to report to the Investigating Officer.

6. The prosecution moved an application for cancellation of bail vide Miscellaneous application No.191 of 2016 and the application came to be allowed on 8/8/2016 by recording as under:

"4. Heard Ld. APP Mr. Arote for the State. He submitted that the offences under MCOC Act are added in the original crime against the accused. There is no provisions in the MCOC Act for grant of anticipatory bail. Accused though served with notice, failed to appear before this Court to contest this

application. Hence, the anticipatory bail granted to him be cancelled. Other accused are arrested in this crime. Hence, application be allowed."

5. The prosecution has placed on record xerox copy of the order passed by this Court dt. 12.01.2016, which this Court had granted anticipatory bail to the accused. The copy of service of notice of this application is also placed on record. Though the accused is served long back through his father on the given address, he purposefully failed to appear before this Court. As the provisions of MCOC Act are applied to this crime, the applicant is not entitled to be released on anticipatory bail. Hence, the anticipatory bail granted to the accused is to be cancelled and the accused is to be directed to appear before the concern police station. Hence, I proceed to pass following order:"

7. The applicant moved the Sessions Court, for being released on bail, but his request was rejected on 26/02/2021, by the Special Judge, this time on the ground that sufficient material is found against him about his involvement in the crime and the antecedents attributed to him would make it clear that, he would continue the unlawful activities, if released on bail and since he was unable to bring on records the ground in his favour required to be scrutinize under section 21 (4) (b) of the MCOC Act, the application was rejected

8. I have perused the charge-sheet which is filed in the

subject C.R., under which the co-accused persons were tried before the Special Court, the applicant being shown as an absconding accused.

The learned APP has vehemently submitted that, the applicant is charged with serious offence under the provisions of MCOC Act by forming an Organized Crime Syndicate for gaining pecuniary advantage and many criminal cases are registered against all of them at various police stations jointly or individually. Saidul Shahanavaz Shaikh was attributed the role of gang leader against whom 15 offences are informed to be registered. As far as the present applicant is concerned, it is alleged that he is a habitual offender and there are two C.R’s registered against him one in Wadala Police Station and other in Silvassa Police Station vide C.R. No. 142 of 2014, of which he is admittedly acquitted.

The learned APP would vehemently submit that after registration of the present C.R. the applicant was absconding and he is the main person who has purchased the stolen oil from the co-accused. The argument is that the activity was conducted in an organized manner by hiring big godowns in the vicinity of underground running base oil pipeline of public petro-chemical company and by tapping the pipeline, the base oil was suctioned underground with big electric suction pumps to the huge capacity tanks installed in the godowns clandestinely. The applicant is alleged to be an active participant in the whole episode, as he was running a firm by obtaining fabricated Tax Identification Number, which would clearly establish his criminal intention in the whole episode.

I have appreciated the seriousness of the accusations faced by the applicant.

9. Mr. Ponda has placed every reliance upon the judgment delivered in MCOC Special Case No.3 of 2017, against the co-accused persons, who are convicted for the offences for which they were charged but all of them stand acquitted for the offences punishable under sections 3 (1)(ii), 3(2) and 3(4) of the MCOC Act.

The copy of the judgment being placed on record is perused by me. After narrating the case of the prosecution, the learned Judge framed several points, the foremost being point no.1 and 2.

"1. Whether the prosecution has proved that, accused in furtherance of their common intention entered into criminal conspiracy and committed dacoity for stealing the base oil from BPCL pipeline?

2. Whether the prosecution has proved that, accused in furtherance of their common intention entered into criminal conspiracy and damaged the BPCL pipeline?"

The court also framed the following points for its consideration to the following effect:

"7 Whether prosecution has proved that, accused had committed an organized crime in furtherance of common intention as an organized crime syndicate headed by wanted accused- Saidul committed organized crime of dacoity?

8 Whether prosecution has proved that, accused abated and conspired the commission of an organized crime?

9 Whether prosecution has proved that, accused were the members of an organized crime syndicate?"

10. While answering the said points against the accused persons , the learned Judge has recorded as under:

"62 Basically, however the prosecution has not succeeded to prove that the accused committed oganized crime as defined u/S.2(1)(e) of the MCOC Act. The prosecution infact has to prove that the proved offences of theft and mischief etc. were committed by crime syndicate of accused by 'use of violence or threat of violence or intimidation or coercionor other unlawful means'. But such an overt act to commit basic crime is no proved by prosecution. That apart, basically for attracting the definition u/s.2(1)(d) of the MCOC Act, the prosecution has relied upon sanction at Ext.150. It disclosed that, more than one charge-sheet was filed against leader of organized crime syndicate- wanted accused- Saidul in the preceding 10 years and the competent Court had taken its

cognizance. The certficate copies of those charge-sheets alongwith the order of cognizance taken by concerned Court are produced respectively at Ets. 80 and 85.

63. Those certified copies are respectively proved by the concerned I.Os as true and correct as per the original charge-sheet are independently admissible in evidence. Those charge-sheets disclose that, wanted accused-Saidul being the head of the gang of accused persons including present absconding accused- Salim Mamdani were indulged into similar crime of stealing base oil from BPCL oil pipeline. Modus-operandi in those crimes is identical with the present crime. Even if thus admitting that the prosecution succeeds to prove continuing criminal activity as defined u/S.2(1)(d) of the MCOC Act, the organized crime could not be proved on that basis itself. The reason is simple, as noticed earlier, that the prosecution has not succeeded to prove definition of 'organized crime' u/S.2(1)(e) of the MCOC Act attracts the present facts. Therefore, I will not go into further detailed scrutiny. Accordingly, the prosecution has not succeeded to prove point nos.7 to 9, hence I answer them in negative."

11. The accused persons were tried for section 379, 120 (b) read with 34 of IPC as well as under section 3 of the Prevention of Damage of Public Property Act and also under the Petroleum and Mineral Pipeline Act, and stand convicted.

The co-accused persons are however acquitted from the charge under MCOCA by recording that the organized crime could not be proved by the prosecution.

12. On the last date I had asked the learned APP to make a statement whether the observations made by the learned Judge in the said judgment are also applicable to the present applicant.

Ms. Veera Shinde, learned APP vehemently submit that he must undergo the trial under MCOC Act along with other charges levelled against him and she cannot make a statement that the prosecution do not intend to try the present applicant for the offences under MCOCA just because other co-accused are acquitted of the said charge.

13. In the backdrop of the circumstances it can be seen that the applicant was released on bail in the year 2016 and the provisions of the MCOCA were not invoked but his protection was ultimately cancelled, when the provisions of the stringent enactment were invoked. He came to be arrested once again in February, 2021 and since then he remain incarcerated. As far as the offences other than those punishable under MCOC Act the co-accused are convicted but as far as the applicant is concerned he is presently facing the charge in special case (MCOC No.500/2021) and on investigation being complete, the charge-sheet is already filed, I cannot but notice the fate of the prosecution case as far as the charges under MCOCA are concerned. The learned Judge has made clear observations as regards the non-justiciability of invoking the stringent

provisions of MCOCA and even if the applicant is tried for the same, the shadow of the judgment rendered by the Special Judge in MCOA Special Case no. 3 of 2017 would continue to linger upon the fate of the prosecution.

In any case the applicant cannot be kept incarcerated with the trial yet to see the light of the day. Though the applicant is liable to take the consequences of the charges- levelled against him, in Special Case no. 500 of 2021, he need not be kept further incarcerated, till he face the trial.

14. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations in any manner.

Hence the following order:

ORDER :

(a) Application is allowed.

(b) Applicant Pintoo Sultanali Keswani shall be released on bail in connection with Special Case MCOCA No. 500/2021 in connection with R.A. No. 144/2021 arising out of C.R.No. 50 of 2015 registered with Sewree Police Station on furnishing P.R. Bond to the extent of Rs.1,00,000/- with one or more sureties in the like amount.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of the trimester between 3:00 p.m to 5:00 p.m till conclusion of trial.

(d) The applicant shall surrender his passport.

(e) The applicant shall not leave the country without permission of the Special Court.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court and shall not tamper with the evidence.

(g) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)