

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1348 OF 2019

Yogesh Vinod Ahiwale. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

 Mr. Sudhir C. Halli, advocate for applicant.

Mr. A.A. Palkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV, J.

RESERVED ON : MARCH 9, 2022.

PRONOUNCED ON : MARCH 11, 2022

P.C.

1 Heard the learned Counsel for the applicant and the
 learned APP for the State.

2 This is successive bail application seeking enlargement on
 bail in Crime No. I-247 of 2015 dated 15/12/2015 registered at Phaltan
 Police Station initially for the offence punishable under section 302, 307,
 387, 143, 147, 148, 149 of the Indian Penal Code. Initially, Bail
 Application No. 1132 of 2017 was dismissed as withdrawn on 11/8/2017.
 On 12/7/2018, the Bail Application No. 2281 of 2017 was dismissed as

withdrawn.

3 The learned Counsel for the applicant submits that although this is a successive application, it is maintainable, as the following issues are being raised for the first time in this application and the applicant is not seeking bail on merits. To substantiate the said contention, learned Counsel submits that present successive application is filed on the following grounds :

(i) That there is non-application of mind while according sanction to prosecute under the provisions of the MCOCA.

(ii) That none of the co-accused in the present case were prosecuted alongwith the applicant in any of the previous cases and therefore, it cannot be said that he belongs to any organization as such.

(iii) That the applicant had filed an application under the provisions of Right to Information Act, 2005 regarding the prosecution of the applicant in the earlier cases, a fact which was relied upon by the sanctioning authority for according sanction to prosecute under the provisions of the MCOCA. The information was received on 11/2/2020 i.e. subsequent to the order of withdrawal. The information that was received is as follows :

- (a) Crime No. 164 of 2008 registered at Phaltan Police station for offences punishable under section 395, 341, 427 of the Indian Penal Code, the applicant was acquitted by the Sessions Court vide Judgment and Order dated 11/1/2013.
- (b) In Crime No. 79 of 2011 registered at Phaltan Police Station for offence punishable under section 395, 341 of the Indian Penal Code, the applicant is acquitted vide Judgment and Order dated 29/11/2014.
- (c) In Crime No. 81 of 2011 registered at Phaltan Police Station for offence punishable under section 307, 353, 333 of the Indian Penal Code, the applicant was acquitted vide Judgment and Order dated 6/5/2013.
- (d) That in the present case, the FIR was lodged on 15/12/2015.

It is therefore, submitted that on the date of registration of Crime No. 247 of 2015 on 15/12/2015, the applicant was acquitted in all the three cases and this aspect has not been taken into consideration by the sanctioning authority and therefore, the stringent provisions of MCOCA will not be applicable to the present case. It is also submitted that the applicant herein has been falsely implicated in the present case and that he is not involved in the present case, and therefore, he is entitled to be released

on bail.

4 The learned APP has raised a preliminary objection that the accused shall seek the relief of quashing of the charges under MCOCA before the Hon'ble Division Bench. The learned Counsel submits that the present application is filed under section 439 and 482 of the Code of Criminal Procedure, 1973 and therefore, the same be heard by this Court.

5 The learned counsel has drawn attention of this Court to section 2(d) of the MCOC Act which reads as follows :

“d) "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 organised crime syndicate or on behalf of such, syndicate in respect of which more than one charge-sheets have been field before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;”

It is the contention of the learned Counsel for the applicant that there is no material to show that the applicant is involved in any continuing unlawful activities.

6 It is the contention of the learned Counsel that the present applicant was not a member of an organized crime and neither there is

material to show that he has worked on behalf of any crime syndicate. That in the present case, there is no material on record to show that the applicant has committed any offence under section 302 and 307 of the Indian Penal Code. The only allegation against the present applicant is that he had threatened the deceased of dire consequences just a fortnight before the incident. Even about the threat that was extended there is no complaint filed by the deceased or any relatives against the applicant. There is no CDR to show that he was in contact with any of the co-accused or the deceased in the present case.

7 Per contra, the learned APP has submitted that there are confessions by the witnesses which clearly indicate that 15 days prior to the incidence, present applicant was carrying a revolver and he had threatened Jyotiram that he should withdraw the case which was filed against Swapnil Kakade and Bunty Kakade under section 307 of the Indian Penal Code and that he would ask the others to withdraw the cases of atrocities filed against him. He had also offered an amount of Rs. One Lakh for withdrawing the case under section 307 of the Indian Penal Code and further threatened that in the eventuality he does not withdraw the case, 'it may cost him his life'. The statements of some witnesses

recorded under section 164 of the Code of Criminal Procedure, 1973 show that Swapnil Kakade had informed the applicant that despite the request made by him, Jyotiram had not withdrawn the case under section 307 of the Indian Penal Code and at that juncture, the applicant had ordered that it is time to eliminate Jyotiram.

8 That the confessional statement of accused No. 5 would show that the arms that were purchased by Bunty Kakade were financed by the present applicant. The same is contention of the accused No. 6. The said statements are not retracted. It is contended that the said statements are recorded by competent authority. That section 18 of the MCOCA contemplates that the said statements are admissible.

9 The learned Counsel for the applicant placed reliance upon Judgment of the Supreme Court in the case of **Lt. Col. Prasad Shrikant Purohit v/s. State of Maharashtra**¹ to substantiate the maintainability of successive bail application. In any case, the learned APP also has not objected to the same. The learned Counsel has also placed reliance upon the Judgment of this Court in the case of **State of Maharashtra v/s. Jagan**

Gagansingh Nepali @ Jaggya and ors.², especially to the observation that-

“It is implicit that while granting permission under subsection (1) and granting sanction under sub-section (2) of section 23 of the MCOCA, the police officers who are undisputedly high ranking, will be required to apply their mind to the facts of the case and come to a prima facie satisfaction as to whether ingredients to constitute the offence punishable under MCOCA are made out or not.”

10 In the case of **Ranjit Singh Sharma v/s. State of Maharashtra**³, the Supreme Court has held as follows :

“The Statement of Objects and Reasons clearly state as to why the said Act had to be enacted. Thus, it will be safe to presume that the expression 'any unlawful means' must refer to any such act which has a direct nexus with the commission of a crime which MCOCA seeks to prevent or control. In other words, an offence falling within the definition of organised crime and committed by an organised crime syndicate is the offence contemplated by the Statement of Objects and Reasons. There are offences and offences under [the Indian Penal Code](#) and other penal statutes providing for punishment of three years or more and in relation to such offences more than one chargesheet may be filed. As we have indicated hereinbefore, only because a person cheats or commits a criminal breach of trust, more than once, the same by itself may not be sufficient to attract the provisions of MCOCA.

Furthermore, mens rea is a necessary ingredient for commission of a crime under MCOCA.”

The Supreme Court has referred to the previous Judgment of the Apex Court in the case of **Shri Ram v/s. The State of U.P.** ⁴, wherein it is

2 (2011) 5 Mh. L.J. 386.

3 (2005) 5 SCC 294

4 AIR 1975 SC 175.

observed that-

"6 Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of [Section 107](#). A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of [Section 107](#)."

Sub-section (2) of [Section 3](#) inter alia provides for facilitating conspiracy or abetting or commission of a crime by a person knowingly or any act preparatory to organised crime."

11 In fact, the subjective satisfaction of the sanctioning authority is sufficient to accord sanction. In the present case, the charge-sheets were filed against the accused in 10 years preceding the present incident. The learned APP has drawn attention of this court to the Judgment of the Apex Court in the case **Kavitha Lankesh v/s. State of Karnataka and ors.**⁵ wherein the SC has held as follows :

"26. It is not necessary to multiply authorities in this regard. Suffice it to observe that the High Court in the present case was essentially concerned with the legality of prior approval granted by the Commissioner of Police, Bengaluru City dated 14.08.2018 for invoking [Section 3](#) of the 2000 Act and thus, to allow

5 AIR 2021 SC 5113.

recording of information regarding commission of offence of organized crime under the 2000 Act and to investigate the same. As aforesaid, while considering the proposal for grant of prior approval under [Section 24\(1\)\(a\)](#) of the 2000 Act, what is essential is the satisfaction of the competent authority that the material placed before him does reveal presence of credible information regarding commission of an offence of organized crime by the organized crime syndicate and, therefore, allow invocation of [Section 3](#) of the 2000 Act. As a consequence of which, investigation of that crime can be taken forward by the Investigating Agency and chargesheet can be filed before the concerned Court and upon grant of sanction by the competent authority under [Section 24\(2\)](#), the competent Court can take cognizance of the case.

27. At the stage of granting prior approval under [Section 24\(1\)\(a\)](#) of the 2000 Act, therefore, the competent authority is not required to wade through the material placed by the Investigating Agency before him along with the proposal for grant of prior approval to ascertain the specific role of each accused. The competent authority has to focus essentially on the factum whether the information/material reveals the commission of a crime which is an organized crime committed by the organized crime syndicate. In that, the prior approval is qua offence and not the offender as such. As long as the incidents referred to in earlier crimes are committed by a group of persons and one common individual was involved in all the incidents, the offence under the 2000 Act can be invoked. This Court in Prasad Shrikant Purohit³¹ in paragraphs 61 and 98 expounded that at the stage of taking cognizance, the competent Court takes cognizance of the offence and not the offender. This analogy applies even at the stage of grant of prior approval for invocation of provisions of the 2000 Act. The prior sanction under [Section 24\(2\)](#), however, may require enquiry into the specific role of the offender in the commission of organized crime, namely, he himself singly or jointly or as a member of the organized crime syndicate indulged in commission of the stated offences so as to attract the punishment provided under [Section 3\(1\)](#) of the 2000 Act.

12 Upon perusal of the charge-sheet, it is clear that the specific role attributed to the applicant is considered by the sanctioning authority in consonance with the past criminal record of the applicant in the preceding 10 years. Hence, no case is made out for grant of bail. The application stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)