

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

CRIMINAL APPLICATION (BA) NO.1297/2021

Mohd. Sajid @ Baba Faiz Mohd. Siddiki

...Versus...

State of Maharashtra Through Assistant Commissioner of Police, Sitabuldi
Division, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri O.K. Masurke, Advocate for applicant
Shri I.J. Damle, APP for non-applicant

CORAM : AVINASH G. GHAROTE, J.

DATE : 19/04/2022

1. Heard Shri Masurke, learned Counsel for the applicant and Shri Damle, learned Additional Public Prosecutor for the non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Sections 392, 411 read with Section 34 of Indian Penal Code and Section 3 of the Maharashtra Control of Organised Crime Act, 1999 (for short, "the MCOC Act" hereinafter) vide Crime No.51/2016. The applicant has been arrested on 06/02/2016. The charge-sheet has been filed on 06/04/2018.

3. Shri Masurke, learned Counsel for the applicant submits that considering the circumstances, the provisions of Section 3 of the MCOC Act are not attracted, on the ground that the offences, which are claimed to have enabled the imposition of Section 3 of the MCOC Act, have been registered after 31/01/2016 and therefore, could not have been considered, for the purpose of invoking Section 3 of the MCOC Act. He further submits that insofar as the offence in Crime No.3304/2007 is concerned, the applicant has already been acquitted and therefore, could not have formed the basis for invocation of Section 3 of the MCOC Act. He also submits that the co-accused has already been released on bail by this Court in Criminal Application (BA) No.514/2018 by an order dated 13/07/2018 and the applicant is also entitled to be released on bail.

4. Shri Damle, learned Additional Public Prosecutor for the non-applicant opposes the application and submits that the role of the applicant, is totally distinct from Rakesh Ninave, who has been released on bail in Criminal Application (BA) No.514/2018. He further submits, that though the applicant has been acquitted in Crime No.3304/2007, however, that is a subsequent event and does not prohibit the invocation of Section 3 of the MCOC Act and therefore, the rigor of Section 21 (4) of the MCOC Act would be applicable. He further contends that the conduct of the applicant in

having been involved, inasmuch as 12 offences after FIR No.51/2016 was lodged on 31/01/2016 itself indicates the criminal intent on part of the applicant and therefore, this is not a case in which the applicant should be enlarged on bail.

5. Initially, the applicant was accused of an offence under Sections 392, 411 r/w 34 of IPC on account of chain snatching event for which the FIR was lodged on 31/01/2016 vide Crime No.51/2016. The applicant was arrested on 06/02/2016 and was released by the learned Judicial Magistrate First Class on bail on 10/03/2016. On 03/05/2016 Section 3 of the MCOC Act was added to the aforesaid crime and an application for cancellation of bail of the applicant was filed before the learned Sessions Court vide Misc. Criminal Application No.1337/2016, in which, the bail came to be cancelled on 03/11/2017 and the applicant was taken into custody on 15/01/2018.

6. The contention that Section 3 of the MCOC Act is not attracted, as all the offences, as shown in the chart at page 38 are after 31/01/2016, *prima facie* appears to be attractive, however, it is material to note that there was an earlier offence, under Crime No.3304/2007 under Sections 294, 506 (B) r/w 34 of the IPC registered against the applicant on 18/03/2008, in which the charge-sheet has been filed on 28/03/2008. Though the applicant has been acquitted

in this crime, on 06/05/2017, however, for the purpose of attracting Section 3 of the MCOC Act the requirement as given in Section 2 (d) of the MCOC Act, is the filing of more than one charge-sheets. In the instant case, apart from the charge-sheet in Crime No.3304/2007, the chart at page 38 indicates that there are as as many as 12 offences registered against the applicant in various crime numbers between the period from 11/02/2016 to 29/04/2016. The chart at page 41 indicates, the pendency of as many as 12 offences individually and jointly against the applicant. What is material to note is that the provisions of Section 3 of the MCOC Act have been invoked on 03/05/2016, considering which, the requirement of Section 2(d) of the MCOC Act is clearly satisfied, as a result of which, Section 3 of the MCOC Act would be attracted.

7. Insofar as the contention that Rakesh Ninave, the co-accused has been released, the record would demonstrate that the role of Rakesh Ninave was merely that of dishonestly receiving stolen property, as against which, the role of the present applicant is of actively being involved in the offence alleged, which is also reflected from his statement under Section 18 of the MCOC Act, in which he admits to having so done (pg.730). The reliance upon ***Thawariya Toliya Bilwal Vs. State of Maharashtra, AIR Online 2021 Bom 82*** by the learned Counsel for the applicant is clearly misplaced, as that was not a case, in which Section 18 of the MCOC Act was under

consideration, and therefore, is of no assistance to him.

8. In view of the aforesaid position, I do not see any reason to accept the arguments of the learned Counsel for the applicant. The criminal application is dismissed.

(AVINASH G. GHAROTE, J.)

Wadkar