IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3288 OF 2021

Rakesh Ramlakhan Singh ..Applicant
VS.
The State of Maharashtra ..Respondent

Mr. Mateen Shaikh a/w Zeeshan Khan for the Applicant.

Ms. P. N. Dabholkar, APP for the State.

PI Satawuse, MIDC Police Station Mumbai.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 18, 2023

P.C. :

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

2. This is an application for bail by the applicant- Rakesh Ramlakhan Singh in Maharashtra Control of Organised Crime Act, 1999 ("MCOCA", for short) Special Case no. 29 of 2019 arising out of C.R. No. 401 of 2019 dated 19/08/2019, registered with MIDC Police Station, under Sections 394, 506 and 34 of the Indian Penal Code, 1860 ("IPC", for short) and under sections 3(1)(ii), 3(2), 3(4) of the MCOCA.

3. The offence in respect of which the C.R. was registered was committed on 19/08/2019. The applicant was arrested on 21/08/2019. The applicant now is in custody for a period of almost 3 years and 5 months. The charge has not been framed and the trial is yet to commence.

4. The prosecution case is as under:

The first informant is the employee of the Riverstone Jewellers to whom some ornaments were handed over for quality check through the International Gemological Institute (IGI). After forwarding those ornaments for quality check at IGI, on 19/08/2019 at about 14.20 hours, the informant went to recollect the ornaments from IGI and collected 19 ornaments from IGI in his bag pack which were given for quality control check earlier. The informant, on the way back, reached near a bus-stop where one of the two accused persons attacked him from behind and slashed him with a sharp cutter in the rear portion of his ear. The said accused also instructed another co-accused to fire a bullet on the leg of the informant. The co-accused twisted the informant's hands and snatched his bag pack. Both the accused person fled away on a pulsar motorcycle parked nearby. On the basis of the complaint lodged by the informant, offence under sections 394, 506(2), 34 vide C.R.

no. 401 of 2019 was registered with the MIDC Police Station, Mumbai on 19/08/2019 initially against 2 unidentified persons and investigation commenced. During the course of the investigation, it was revealed that the offence was committed by accused no. 1- Iqbal Issak Khan, accused no. 2- Firoz Hussain Malik, accused no. 3- Ramzan Mohammed Hussain Khan and the accused no. 4- Rakesh Ramlakhan Singh (present applicant.)

5. The role attributed to the applicant is that he was actively involved in the commission of the aforesaid offence, though the applicant is not an actual assailant or the one who snatched the bag. The material against the present applicant is (1) CDR- call details that he was in touch with the other co-accused, (2) some ornaments were recovered from him, (3) the applicant was involved in selling the articles. *Prima facie*, there are materials against the applicant, showing his involvement. The applicant, as stated earlier, is not the actual assailant. The applicant is in custody for more than 3 years and 5 months. The trial is not likely to conclude soon. Without MCOCA having been invoked, so far the present C.R. is concerned, considering the role of the applicant and that he is not the actual assailant, I would have enlarged the applicant on bail.

6. However, I have to bear in mind that the prosecution was of the opinion that there is sufficient evidence to prove the continuous unlawful activities of the organised crime syndicate, headed by Firoz Hussain Malik and more than one charge-sheets of the cognizable cases having punishment 10 years or more have been filed before the competent Courts within preceding 10 years and the competent Courts have taken cognizance of the said charge-sheets. The provisions of the MCOCA have been invoked. After obtaining sanction, under section 23(2) of the MCOCA, charge-sheet was filed against 4 accused. Accused no. 2 is alleged to be the gang leader. The present applicant is accused no. 4. So far as the gang leader by name Firoz Hussain Malik (accused no. 2) is concerned, the following are past criminal antecedents reported against him which is disclosed from the affidavit filed by Shri Sunil Sahadev Gaonkar, Assistant Commissioner of Police, Andheri Division, Mumbai. The same reads thus:

Sr. No.	CR No. and Police Station	U/secs.	Status
1	103/2008 Bhandup Police Station	324, 323, 504 IPC	Court Pending
2	320/2008 Andheri Police Station	379, 34 IPC	Court Pending
3	167/2014 Bhandup Police Station	324, 323, 504, 506, 34 IPC	
4	498/2015 Bhandup Police Station	384, 386, 394, 504, 34 IPC	Court Pending

It is pertinent to note that from the affidavit what is revealed is that against the gang leader, 4 offences are registered in his individual capacity. However, so far as these 4 cases are concerned, there is only one C.R. registered as a member of the crime syndicate and resultantly, there is only one charge-sheet.

7. The question is whether the offence committed by the gang leader in his individual capacity in respect of which the C.R.s are registered in the years 2008, 2014 and 2015 could be regarded as committed by him as a member of an organised crime syndicate on behalf of such crime syndicate. *Prima facie*, except the gang leader, none of the accused either singly or jointly are arraigned as accused in the C.R.s registered against the gang leader. There is nothing to indicate that Firoz committed the offences mentioned above in the table as a member of or on behalf of the syndicate. The commonality of the crime syndicate is only in respect of C.R. no. 401 of 2019 and hence, in my *prima facie* view, for invoking the provisions of MCOCA, the requirement of filing more than one charge-sheet is not fulfilled.

8. Their Lordships of the Hon'ble Supreme Court in the case of **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. The State of Gujarat**[1] had an occasion to consider the provisions of the MCOCA. The said decision has bearing on the present application. It is necessary for me to reproduce the order dated 30/05/2022 which reads thus:

> "Upon hearing the counsel the Court made the following
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> O R D E R
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> The petitioner/applicant has approached this Court feeling aggrieved by the judgment and order passed by the High Court of Gujarat dated 5th January, 2022, thereby rejecting the application filed by the petitioner/applicant for grant of bail in connection with FIR No.66 of 2021.
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> We have heard Mr. Mukul Rohatgi learned senior counsel for the petitioner/applicant and Ms. Deepanwita Priyanka, learned counsel appearing for the respondent-State.
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> Mr. Rohatgi submits that for invoking the provisions of the Gujarat Control of Terrorism and Organised Crime Act, 2015 (hereinafter referred to as "the GCTOC Act") which is analogous with the Maharashtra Control of Organized

1 Special Leave to Appeal (Crl) No. 1815/2022 (Supreme Court of India)

Crime Act, 1999 (hereinafter referred to as “MCOCA”), two requirements have to be satisfied. The first one is that an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. The second one is that in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last 10 years.

Mr. Rohatgi submits that in the present case, the second requirement is not satisfied. He submits that in the Chart wherein all the crimes registered against the petitioner/applicant have been listed, it could be seen that only FIR No.64 of 2021 dated 26th January, 2021 is in respect of an activity committed by two members of the syndicate. He therefore submits that requirement of filing of more than one chargesheets is not satisfied in the present case.

Mr. Rohagti further submits that the petitioner/applicant has already been released on bail in respect of other FIRs. Only on account of him being implicated in FIR No. 66 of 2021 under GCTOC Act, he is deprived of his liberty.

Mr. Rohatgi further submits that unless there is some act in respect of which an offence is registered, the provisions of the GCTOC Act cannot be invoked.

Ms. Deepanwita Priyanka on the contrary submits that all the offences alleged in the FIRs which are given in the Chart, are directly or indirectly committed for the benefit of the crime syndicate of which the petitioner/applicant is a member. She relies on the judgment of this Court in the case of Prasad Shrikant Purohit vs. State of Maharashtra, reported in (2015) 7 SCC 440.

Undisputedly, the perusal of the Chart would reveal that only one offence, i.e., FIR No. 64 of 2021 would show that it has been committed by seven accused out of which two are the members of the syndicate. In respect of offences at Serial Nos. 1 to 4 in the Chart, no members of the syndicate are arrayed as accused.

We are of the prima facie view that for invoking the provisions of the GCTOC Act, the following conditions will have to be fulfilled:

(i) that such an activity should be prohibited by law for the time being in force;

(ii) that such an activity is a congnizable offence punishable with imprisonment of three years or more;

(iii) that such an activity is undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate;

(iv) that in respect of such an activity more than one charge-sheet must have been filed before a competent Court; and

(v) that the charge-sheet must have been filed within a preceding period of ten years; and

(vi) that the Courts have taken cognizance of such offences.

Undisputedly, in the present case only one charge-sheet was filed in respect of an activity which can be said to have been undertaken by the petitioner/applicant as a member of an organised crime syndicate on behalf of such syndicate.

Taking into consideration this aspect of the matter and further that the petitioner/applicant has already been directed to be released on bail in respect of crime registered at Serial Nos. 1 to 5, we are inclined to allow the present Special Leave petition.

The petitioner/applicant is, therefore, directed to be released on bail on such terms and conditions as found appropriate by the Trial Court.

In addition, we impose the following conditions on the petitioner/applicant:

1. The petitioner/applicant shall report to the investigating officer on every Monday between 10.00 a.m. to 1.00 p.m.

2. The petitioner/applicant will not attempt to influence the witnesses or tamper with the records.

The special leave petition stands allowed in the aforesaid terms.

All pending applications shall stand disposed of."

9. Learned counsel for the applicant referred to the decision of this Court in the case of **Shri Girish Kumar**

Nayar Vs. The State of Maharashtra[2]. Paragraph no. 13 of the said decision makes a reference to the law laid down by the Hon'ble Supreme Court in the case of **Ranjeetsingh Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.**[3]. Paragraph no. 13 reads thus:

> "13 It may be stated, that mere number of fling charge-sheet in the past is not in enough. It is only one of the requisites for constituting organised crime. It has been observed in **Prafulla (Supra)** that if only the past charge-sheets were to be enough to constitute offence of organised crime, it could have offended the requirement of Article 20(1) of the Constitution and possibly Article 20(2) as well. Here the prosecution has just relied on the previous offences at the discredit of the applicant and nothing more. To constitute continuing unlawful activity following are requirements of law:
>
> > *"i more than one charge-sheet, alleging commission of cognizable offence punishable with imprisonment of three years or more;*
> > *ii a charge-sheet should consist of averments, alleging unlawful activity undertaken either singly or jointly by the accused;*
> > *iii as a member of organized crime syndicate or on behalf of such syndicate;*
> > *iv the cognizance of such offence is taken by the competent court."*
>
> Thus, in order to bring an alleged act within the ambit of MCOC Act, the above mentioned requirements are mandatory. Therefore, word "in respect of which" in definition of clause of "continuing unlawful activity" indicates that it is not a normal charge-sheet, alleging commission of cognizable offence but requirement is that alleged acts is undertaken either singly or jointly by the accused, who is member of organised crimes syndicate or is undertaken on behalf of such syndicate. In the case in hand, no efforts were made by the prosecution to show

2 Bail Application No. 2241 of 2018
3 (2005) ALL MR (Cri) 1538 (S.C.)

> that past two offences in respect of which charge-sheets were fled, were committed by the applicant as member of organised crime syndicate, I.e, acting as syndicate or a gang or on behalf of such syndicate. In **Ranjeetsingh Brahmajeetsing Sharma v. State of Maharashtra & Anr.**[3], it is held, the unlawful activity alleged in the previous charge-sheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control. Thus, it was imperative on part of the prosecution to establish *prima-facie* some nexus between the past crimes at the discredit of the applicant and the present crime, which has not been shown by the prosecution nor the material on record suggests and indicates such nexus."

10. Learned APP relied upon the decision of the Hon'ble Supreme Court in the case of **Prasad Shrikant Purohit Vs. State of Maharashtra and Anr.**[4] and the division bench of this Court in the case of **Govind Sakharam Ubhe Vs. State of Maharashtra**[5]. The law regarding requirement of one more charge-sheets has been settled by these decisions.

11. I am, therefore, *prima facie* satisfied that in the present case, the requirement of filing of more than one charge-sheet is not satisfied and undisputedly in the present case, only one charge-sheet is filed, in respect of the activity which is said to have been undertaken by the applicant as a member of the organised crime syndicate on

4 AIR 2015 SUPREME COURT 2514
5 2009 ALL MR (Cri) 1903

behalf of such syndicate.

12. The offence registered against the gang leader, *prima facie,* in my opinion, does not appear to have been committed by him as a member of the syndicate. Apart from what is discussed by me hereinabove, it is pertinent to note that there are no criminal antecedents against the applicant. Of course, this aspect would not have been relevant if, in the facts of the present case, it could be demonstrated that more than one charge-sheets are filed, in respect of an activity stated to have been undertaken by the applicant as a member of the organised crime syndicate on behalf of such syndicate. The applicant, therefore, can be released on bail. Hence the following order.

ORDER

(a) Applicant- Rakesh Ramlakhan Singh shall be released on bail in MCOCA Special Case no. 29 of 2019 arising out of C.R. No. 401 of 2019, registered with MIDC Police Station, on his furnishing P.R. Bond of Rs.50,000/- with one or more local sureties in the like amount;

(b) 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 or any Police Officer. The applicant shall not tamper with evidence;

(c) The applicant shall report to the concerned police station once in a week i.e. on every Saturday between 11.00 a.m. and 01.00 p.m;

(d) 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;

(e) The applicant shall not leave the jurisdiction of Mumbai / Mumbai Suburban District without prior permission of the Special Court.

13. The application is disposed of.

14. A request for stay of the order is made, the same is rejected.

(M. S. KARNIK, J.)