IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.
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CRIMINAL APPLICATION (BA) NO. 55/2023

Rakesh w/o Wasudeorao Dekate .. Applicant

versus

The State of Maharashtra
Th: Its PSO, P.S.Dhantoli, Dist.Nagpur. ..Respondent
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Mr. S.V. Manohar, Senior Advocate a/by Mr.U.P. Dable, Advocate for the applicant
Mr. A.M. Kadukar, APP for Respondent
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CORAM: ANIL L. PANSARE, J.
DATED : 23rd February, 2023.

PC:

Heard learned counsel for both the sides, at length.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested on 06.02.2021 in Crime No.39/2021 registered at Police Station Dhantoli, Nagpur, for the offences punishable under Sections 323, 364A, 384, 386, 504, 506, 420, 120B r/ws.34 of the Indian Penal Code; Sections 43, 44, 45, 46 of the Maharashtra Money Lending (Regulation) Act, 2014 and Sections 3(i)(ii), 3(2) and 3(4), 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999 (in short 'MCOCA').

3. The law was set in motion on 05.02.2021 by the informant, by stating that since the year 1989, he is involved in the business of construction and property development. He states that Madan Kale and

Mahesh Sabne were involved in the business of property dealing and money lending. The informant was in dire need of Rs. 2 lakhs in the month of December, 2010. Madan and Mahesh arranged Rs. 2 lakhs on the condition that 10 per cent interest will be charged. The informant then obtained Rs. 4 lakhs more, as loan from Madan and Mahesh. The informant left to United States of America where his daughter was prosecuting her studies. He returned in January, 2011. Madan and Mahesh informed him that because of failure to pay interest, the total amount with penalty, rose to Rs. 8 lakhs. The informant paid them Rs. 80,000/- towards interest. However, he could not pay the principal amount.

4. The informant further states that during the period from April 2011 to April 2012, he paid an amount of Rs. 18 lakhs to Madan and Mahesh. Despite this, Madan and Mahesh said that informant owes amount to them. The informant then states that in April 2012 he paid an amount of Rs. 30 lakhs to Madan and Mahesh. The informant then states that he had paid additional sum and that till June, 2013 he had paid Rs. 73 lakhs. Thereafter, Madan introduced the informant to Rakesh Dekate (the present applicant). At that time, the informant came to know that the Rakesh is the one who has routed the amount of loan through Madan and Mahesh. It is further the case of the informant that in January 2014 he shifted to Pune. One Mr Nilesh Thakare, the friend of Mahesh and Madan, used to help him. In March/April 2014 when he had been to Nagpur, he was made to sit in a Tata Safari at the instance of the applicant. The informant was taken to the office of the applicant where Madan and Mahesh were present. The applicant abused him and also beat him and gave life threats and demanded Rs. 2.5 crores. The FIR

then indicates that some properties were transferred in the name of the name of the brother of the applicant. The informant also states that whenever he used to come to Nagpur, the applicant used to abuse him. In May 2017, the applicant obtained signature of informant on 50 blank stamp papers. It is also alleged that the applicant and co-accused made informant to open an account, wherein some amount has been transferred, but the amount was withdrawn subsequently, as the applicant and co-accused had obtained his signature on the blank cheques.

5. Lastly, it is stated that on 02.02.2021 when he came to Nagpur, in his house, situated at Vivekanandnagar, Nagpur, the applicant, his brother Mukesh Dekate, co-accused Naresh and Mahesh came there and quarelled with the informant and his wife and demanded money. The informant made a phone to police. The applicant and co-accused then left the place.

6. Thus, it took around 11-years for the informant to lodge the report, which also indicates that he was continuously harassed and threatened with dire consequences. The informant's signatures were obtained on blank stamp papers and blank cheques, his properties were transferred in the name of the co-accused. The initial loan of Rs. 6 lakhs has swollen to crores of rupees without there being any justification whatsoever. The informant went on paying the amount but the applicant and co-accused were not satisfied. In the circumstances if in February 2021, on finding the applicant and co-accused in the house of informant if the informant could call the police, it is difficult to digest that he observed omerta for all these years.

7. The FIR itself indicates that the informant is a businessman. The co-accused and informant were friends. They extended financial help to the informant but on exorbitant interest. The informant has chosen to take the amount of loan, may be because of the dire need then existed. It is unlikely for a businessman to continue to pay huge amount under coercion except in extremely helpless situations which is absent in the present case.

8. The FIR indicates that the informant had shifted to Pune and had taken the help of the co-accused and then he came down to Nagpur but was assaulted. Despite such status, the informant continued to come to Nagpur and was subjected to abuse at the hands of the applicant and others. He has also paid huge amount without any protest and suddenly after 11-years, lodged FIR. The entire delay is attempted to be justified on the premise that he was afraid of the threats of the applicant.

9. Mr.Sunil Manohar, learned Senior Advocate for the applicant contends that the informant had obtained loan from the applicant and the co-accused. For some reason there arose a dispute between the two parties. He states that the allegations made are highly improbable inasmuch as businessman like the informant, will not pay such a huge amount without any reason when the initial loan was merely Rs. 6 lakhs. The informant has transferred his properties in the name of the co-accused. A prudent man will not maintain silence if someone obtains signature on 50 blank stamp papers and the entire cheque book. The silence over a period of 11-years would question the genuineness of the

story.

10. He further submits that the provisions of MCOCA cannot be applied since the prosecution has not placed on record any material to show that the offences alleged against the applicant and the co-accused were committed as a member or on behalf of the organized crime syndicate headed by the applicant.

11. The learned APP, however, has taken aid of the observations made by the learned Sessions Court to oppose the present application. The learned Sessions Court while rejecting the application of the present applicant observed in paragraph 6 as under:-

> *"6. The learned counsel for the applicant submitted that on bare perusal of the order of granting approval and the sanction, it appears that those were passed mechanically flouting the provisions of MCOC Act. He submitted that the applicant neither in his individual capacity nor as a member of alleged gang, committed any offence. Even, there is nothing to show that the accused Rakesh Dekate is gang leader and the applicant joined the organized crime syndicate. There is even nothing to show that there is nexus between previous offences committed by co-accused persons and the present crime in order to attract the provisions of MCOC Act. He would submit that there is no iota of material to draw conclusion that the applicant is member of organized crime syndicate. He would submit that the provisions of MCOC Act are not applicable. The applicant is having no criminal antecedents to his discredit. He further submitted that charge-sheet is filed and the further incarceration of the applicant is not required…."*

12. The learned APP has then referred to crime chart against the applicant and the co-accused, to substantiate the case that the provisions

of MCOCA have been correctly applied.

13. The chart indicates of commission of as many as 27 crimes. Some of these crimes have been allegedly committed by the applicant and some by the co-accused. Upon enquiry as to which amongst the previous charge-sheets would indicate continuing unlawful activity of the syndicate, the learned APP could not point out even one. The continuing of unlawful activity is the one which in a way is commission of cognizable offence punishable with imprisonment of three years or more and which has been undertaken either singly or jointly as a member of the organized crime syndicate or on behalf of such syndicate in respect of which one or more charge-sheet have been filed before the competent court and that cognizance thereof has been taken by the Court. Thus, the legitimate expectation would be that the prosecution will submit at least two charge-sheets to indicate that person/s has/have committed an offence for or on behalf of the organized crime syndicate within the preceding 10 years. The offence under question has been committed in the year 2021. The crime chart shows that five of the crimes have been registered against the applicant and co-accused during the period from 2012 to 2019. Out of these five crimes, the learned APP could not point out any crime /offence which can be said to be a continuing unlawful activity. Thus, on the face of the record, it appears that the provisions of MCOCA could not have been invoked. In sequel, the rigour of Section 23(4) of the MCOCA would not apply.

14. Even otherwise, if totality of circumstances are considered there appears substance in the contentions of the learned Senior Advocate that the story put forth by the informant through the first

information report appears to be highly improbable, for the reasons recorded in earlier paragraphs.

15. The learned Senior Advocate has then pointed out that the co-accused have been released on bail. If that be so, there is no reason why the applicant should not be released on bail.

16. The charge-sheet has been filed. The charge has not yet been framed. It will take some time to commence and conclude the trial. In the circumstances and for the reasons recorded in earlier paragraphs, in my considered view, no fruitful purpose would be served by keeping the applicant behind bars. The interest of prosecution can be protected by putting the applicant to appropriate terms.

17. Needless to mention, that the observations made hereinabove are for the purpose of deciding this Application only and the trial Court shall not get influenced by it.

18. Hence, the following order :

<u>ORDER</u>

(i) The Application is allowed.

(ii) The applicant-Rakesh Wasudeorao Dekate, be released on bail, in Crime No.39/2021 registered with Police Station Dhantoli, Nagpur, for the offences punishable under Sections 323, 364A, 384, 386, 504, 506, 420, 120B r/ws. sec.34 of the Indian Penal Code; Sections 43, 44, 45, 46 of the Maharashtra Money Lending (Regulation) Act, 2014 and Sections 3 (i)(ii), 3 (2) and 3(4), 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999, on he furnishing P.R. bond in the sum of Rs.

50,000/- (Rupees fifty thousand) with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number (s) to the Investigating officer and the Court concerned, and shall not change the mobile number(s) and the residence till the final disposal of the case.

(iv) The applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or any Police Officer.

(vi) The applicant shall maintain law and order.

(vii) The applicant shall surrender his passport before the Investigating Officer within a period of one week from today. If he does not possess any passport, he shall file an affidavit to that effect.

(viii) In case of breach of any condition, the learned trial Court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The Application is disposed of in the above terms.

[**ANIL L. PANSARE, J**.]

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