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

CRIMINAL APPLICATION (BA) NO.315/2023
Mohammad Nadim @ Naddu Mohammad Ibrahim
..vs..
State of Mah., thr.PSO PS Nandanwan, Nagpur

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

Shri D.V.Chauhan, Senior Counsel for the Applicant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 20/06/2023
PRONOUNCED ON : 03/07/2023

1. By this application, the applicant seeks regular bail in connection with Crime No.592/2021 registered with Nandanwan Police Station, Nagpur for offences punishable under Sections 307, 143, 147, 148, and 149 of the Indian Penal Code read with Section 3 of The Maharashtra Control of Organized Crime Act, 1999 (the MCOC Act).

2. Initially, the offence was registered under the provisions of the Indian Penal Code. The investigating officer after obtaining sanction, applied the provisions of the MCOC Act against the applicant and other co-accused.

3. The applicant is arrested on 1.6.2022 and since then he is in jail.

4. The crime is registered on the basis of report lodged by Salma Khatun Khan on 25.10.2021. Irfan @ Bhola, the injured, is her son. The accusations against the applicant and other co-accused are that on 24.10.2021, injured Irfan came to his house at about 10:00 pm. He went upstairs of his house and after some time he left the house. After a lapse of time, 5-6 unknown persons went upstairs, who were armed with weapons. After about half an hour, the informant received a call and she was informed that Irfan @ Bhola has been assaulted by some persons and rushed to the Seven Star Hospital. The friends of injured Irfan @ Bhola disclosed to the informant that the applicant and other co-accused have assaulted injured Irfan @ Bhola. On the basis of the said report, the crime is registered.

5. Heard learned counsel Shri D.V.Chauhan for the applicant and learned Additional Public Prosecutor for the State.

6. Learned counsel Shri D.V.Chauhan for the applicant submitted that the applicant is falsely implicated in the alleged offence. Even, perusal of statements reveals that no overt act is attributed to him. There is no allegation in the First Information Report that he had assaulted injured Irfan @

Bhola by any deadly weapon. As far as the provisions of the MCOC Act are concerned, there is no link to show that he is a member of a gang formed for commission of the offence for invoking stringent provisions. There must be more than one chargesheets against the organized crime syndicate in past ten years. He submitted that insofar as the allegations in the First Information Report are concerned, names of other co-accused are mentioned and the name of the applicant is not appearing in the First Information Report. Subsequently, statement of injured Irfan @ Bhola is recorded. As per the statement of injured Irfan @ Bhola, he was assaulted by Sk.Aifaz Sk.Aslam, Shahrukh Kasai, Javed, Mohd.Nadim @ Nandu Mohd.Ibrahim, Irfan Bhai, Fardeen, Siraj, Sanu, and others. The only allegation against the applicant is that he attempted to drive the car on the person of injured Irfan @ Bhola. The statements of eyewitnesses are also recorded who have not attributed any overt act to show that injured Irfan @ Bhola was assaulted by the applicant. As far as injured Irfan @ Bhola is concerned, he is also having the criminal background. The crime is registered against him vide Crime No.591/21 and the provisions of the MCOC Act are also applied against him by obtaining necessary sanction. Thus, injured Irfan @ Bhola is also a member of gang who is involved in the organized crime.

Learned counsel for the applicant further submitted that Sk.Moin, the co-accused, against whom similar allegation is levelled, is already released on bail. The other co-accused are also released on bail. Accused Javed @ Golu Sayyad Akram, against whom the allegation of the assault is levelled, is also released on bail. It is his contention that all other co-accused are already released on bail, who are facing similar allegations. Considering the same, the applicant be released on bail.

7. *Per contra*, learned Additional Public Prosecutor Shi A.M.Kadukar for the State strongly opposed the application on the ground that there are criminal antecedents against the applicant. The applicant and other co-accused arrived on the alleged spot of the incident with deadly weapons and assaulted injured Irfan @ Bhola. The statements of eyewitnesses are recorded which shows involvement of the applicant in the crime. There is a limitation under Section 21(4) of the MCOC Act. He submitted that considering the limitations under Section 21(4) of the MCOC Act, the applicant is not entitled for bail. He further submitted that the involvement of the applicant in the crime reveals from the investigating papers. There are criminal antecedents against the applicant and in all 8 offences are registered against him. Considering the same,

the application deserves to be rejected.

8. Having heard both the sides and perused the investigating papers, it reveals that the allegation against the applicant is that on the day of the incident along with the other co-accused he has assaulted injured Irfan. In the First Information Report the name of the applicant is not mentioned. Eyewitnesses namely Arshad Ali Rajjak Ali, Irshad Shekh, Sk.Israil Sk.Ismail have not attributed any overt act to the applicant. As per the statement of injured Irfan, he alleged that applicant has attempted to drive his car on his person and, therefore, he fell on the ground and, thereafter, he was assaulted by the other co-accused. Initially, the crime was registered under the provisions of the Indian Penal Code. During the investigation, the investigating officer collected the material and it revealed that the applicant has committed total 8 offences and out of which he has jointly committed six offences which are registered at Nandanwan Police Station, Nagpur. The chart shows that total 8 offences are registered against him and, therefore, the provisions of the MCOC Act are applied against him. From the chart, it reveals that Crime No.263/2012; Crime No.489/2015, and Crime No.523/2018 are already disposed of against the applicant. These crimes are

registered against the applicant not as a member of organized crime syndicate.

9. To apply the provisions of the MCOC Act, it is necessary to consider the expression "*continuing unlawful activity*".

In view of Section 2(1)(d) of the the MCOC Act, activities prohibited by law for the time being in force punishable as described therein have been undertaken either singly or jointly as a member of organized crime syndicate and in respect of which more than one chargesheets have been filed. The Stress is on the unlawful activities committed by the organized crime syndicate.

Section 2(1)(f) of the MCOC Act defines "organized crime syndicate" means a group of two or more persons who, acting singly or collectively, as a syndicate or a gang indulged in activities of organized crime.

10. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized crime syndicate indulge in organized crime. That they indulge in use of violence, threats of violence, intimidation, etc. to gain pecuniary benefit or undue economic or other advantage for

themselves or any other person. These activities as per the definition of organized crime are continuing unlawful activity prohibited by law. The definition of continuing unlawful activity is defined in Section 2(1)(d) which means that 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 organized crime syndicate or on behalf of such syndicae in respect of which more than one chargesheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence.

11. Thus, for an activity to be a `continuing unlawful activity', a) the activity must be prohibited by law; b) it must be a cognizable offence punishable with imprisonment of three years or more; c) it must be undertaken singly or jointly; d) it must be undertaken as a member of an organized crime syndicate or on behalf of such syndicate e) in respect of which more than one charge-sheet have been filed before a competent court.

12. Thus, Section 2(1)(d) of the MCOC Act defines “continuing unlawful activity” set down a period of ten years

within which more than one chargesheets have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in different modules. A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOC Act can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOC Act.

13. For enabling the court to exercise its discretion in favour of a person the accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an offence of organized crime. The satisfaction that the accused is not guilty is to be on the basis that there are reasonable grounds for believing that the accused is not guilty. The phrase "reasonable ground" is not similar to the sufficient grounds.

14. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Honourable Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Mah.**

and anr, reported in 2005 ALL MR (Cri) 1538 (SC) held that the restriction imposed by Section 21 (4) of the MCOC Act on the powers of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no ground for proceeding against him at all on the charge of an offence punishable under the MCOC Act. The provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail. A careful analysis of the relevant provisions and the observations made by the Honourable Apex Court it reveals that the legal position in that regard is that for enabling the court to exercise its discretion in favour of person accused of having committed an offence punishable under the MCOC Act, what is required is existence of reasonable grounds for believing that applicant before the court is not guilty of an organized crime. The satisfaction that the accused is not guilty is not contemplated by the relevant provisions and what is required is that the satisfaction that there are reasonable grounds for believing the accused to be not guilty. The phrase "reasonable grounds" should not be confused with the phrase "sufficient grounds". It cannot be lost sight of the fact that the special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. The tests, that are applied while considering bails, are that whether positive finding can be recorded that the accused is not guilty for such an offence. The Honourable Apex Court has observed in the case cited *supra* that it is not the court is required to come to positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

15. In the light of the above principle, if the facts of the present case are considered, admittedly, there is no material to show that the applicant has committed the offence as a member of organized crime syndicate. The chart shows that all the crimes registered against the applicant are in his individual capacity. There is also no material to show that he has committed the said offences to gain pecuniary benefits or undue economic or other advantage for himself or any other person. Thus, there are certainly reasonable grounds for believing that the applicant is not guilty of any of offences covering under the organized crime. In fact, applicability of the MCOC Act itself is doubtful. Even, there is nothing on record to demonstrate nexus between the present offence and

the earlier offences. There is no material to show that the earlier offences registered against the applicant are committed by him as a member of organized crime syndicate.

16. For the reasons recorded above, the application deserves to be allowed. Hence, I pass following order:

ORDER

1) The criminal application is **allowed**.

2) Applicant - Mohammad Nadim @ Naddu Mohammad Ibrahim, in connection with Crime No.592/2021 registered with Nandanwan Police Station, Nagpur for offences punishable under Sections 307, 143, 147, 148, and 149 of the Indian Penal Code read with Section 3 of The Maharashtra Control of Organized Crime Act, 1999, be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

3) The applicant shall attend the concerned police station, till conclusion of the trial.

4) The applicant shall not leave the jurisdiction of the District Court Nagpur without prior permission of the said court.

5) The applicant shall not indulge in the similar type of activities.

6) Contravention of any of conditions above leads to cancellation of the bail.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!