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

CRIMINAL APPLICATION (BA) NO.843/2023
Shahrukh alias Kasai Shaikh Akram
..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, Counsel for the Applicant.
Shri Nikhil Joshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 20/12/2023
PRONOUNCED ON : 22/12/2023

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 Organised Crime Act, 1999 (the MCOC Act).

2. Initially, the offence was registered under the provisions of the IPC. During investigation, it revealed to the investigating officer that the applicant is leader of organized crime syndicate and in furtherance of common object of the said syndicate, he committed several offences and, therefore, after obtaining a sanction, applied 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. As per accusations, the crime is registered on the basis of report lodged by Salma Khatun Rauf Khan, the mother of injured viz. Irfan @ Bhola. It is alleged that the applicant and other co-accused came at her house on 24.10.2021 and, thereafter, injured left the house and again came at about 10:00 pm.. After some time, 5-6 unknown persons went upstairs who were armed with weapons. Again, the injured left the house and after half an hour, the complainant received a call that her son has been assaulted by some persons and she rushed to Seven Star Hospital. As per the report, her son was assaulted by co-accused. On the basis of the said report, the crime was registered.

5. Learned counsel Shri D.V.Chauhan for the applicant, submitted that there is no material collected during investigation to show that the applicant is running organized crime syndicate and in furtherance of common object of the said syndicate, he committed offence. In fact, the injured is having criminal background and several offences are registered and the provisions of the MCOC Act are also applied against him. He

fairly submitted that several offences are registered against the applicant, but, considering nature of the offence, the investigating officer has not collected any evidence to show that these crimes are committed to gain illegal wealth generated by contract killing, extortion, smuggling, and contraband, illegal trade in narcotics, and money laundering etc.. Thus, he submitted that offences registered against the applicant are in the nature of Sections 324 and 325 of the IPC, committed out of quarrel between two parties. The statements of the injured and alleged eyewitnesses are contradictory in nature. As far as provisions of the MCOC Act are concerned, there is no link to show that he is a member of gang formed for commission of the offence for invoking stringent provisions. There must be more than one chargesheet against the organized crime syndicate. He submitted that if the FIR is perused, it would show that in the crime it does not mention the name of the applicant. In statement of the injured, it is alleged that the applicant gave a blow of knife on his chest. In subsequent statement, he changes his version and states that the applicant gave a blow on his abdomen. The statements of eyewitnesses are also contradictory as in earlier statements they attribute role of the assault to the applicant and in subsequent statements it is only stated that they have seen the applicant fleeing away from spot of incident. Thus, presence of eyewitnesses itself is suspicious. He further submitted that co-accused Javed @ Golu Sayyad Akram, against whom allegation of the assault is levelled, is also released on bail. Considering the same, on the ground of parity, the applicant deserves to be released on bail.

6. *Per contra*, learned Additional Public Prosecutor Shri Nikhil Joshi for the State submitted that there are criminal antecedents against the applicant. The applicant is gang leader and committed various offences in furtherance of common object of the organized crime syndicate. In view of rigor under Section 21(4) of the MCOC Act, the application of the applicant deserves to be rejected. He further submitted that statement of injured supported by eyewitnesses made out a *prima facie* case against the applicant. As such, the application deserves to be rejected.

7. Having heard both the sides and perused investigation papers, it reveals that allegations against the applicant are that on the date of the incident, along with the other co-accused, he assaulted the injured. Admittedly, his name is not mentioned in the FIR. Eyewitnesses namely Arshad Ali Razzak Ali, Irshad Sheikh Sheikh Mohd., and Sheikh Israil Sheikh Ismail have attributed role of the assault by means of

knife by the applicant on abdomen and back. Whereas, statement under Section 164 of the CrPC shows that they have seen the applicant running from the spot. Initially, the crime was registered under the provisions of the IPC. During investigation, the investigating officer collected information and it revealed to him that the applicant committed several offences and out of them, three offences are committed along with Mohd.Nadim, one of co-accused. As per chart, Crime Nos.263/2012 and 489/2015 are against the applicant and Mohd.Nadim which are already disposed of. The crime number 294/2015 is against the applicant and Mohd.Nadim which is pending and registered under Section 326 read with Section 34 of the IPC.

8. 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.

9. 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 syndicate 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.

10. 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.

11. 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.

12. Learned counsel Shri D.V.Chauhan for the applicant, submitted that there is no material to show that the applicant is running organized crime syndicate. Even, the chart placed on record along with the chargesheet nowhere shows that the

applicant committed the offence as member of organized crime syndicate and none of offences is registered to show that the applicant has generated illegal wealth by committing the said crime. Thus, the provisions of the MCOC Act are not applicable.

13. Whereas, learned Additional Public Prosecutor Shri Nikhil Joshi for the State placed reliance on the decision in the case of **Zakir Abdul Mirajkar vs. State of Maharashtra, reported in AIR OnLine 2022 SC 1325** wherein provisions of the MCOC Act are analyzed by the Honourable Apex Court. While analyzing provisions, the Honourable Apex Court laid down an overview of the MCOC Act by observing, as follows:

> The Maharashtra Control of Organized Crime Act 1999, as its long title indicates, is "an Act to make special provisions for the prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang and for matters connected therewith or incidental thereto". The statement of objects and reasons contains the reasons which constituted the foundation for the legislature to step in:
>
> Firstly, organized crime which is in existence for some years poses a serious threat to society;
>
> Secondly, organized crime is not confined by national boundaries;
>
> Thirdly, organized crime is fuelled by illegal wealth generated by contract killing, extortion, smuggling and contraband, illegal trade in narcotics, kidnapping for ransom, collection of

> protection money and money laundering, and other activities;
>
> Fourthly, the illegal wealth and black money generated by organized crime pose adverse effects on the economy;
>
> Fifthly, organized crime syndicates make common cause with terrorists fostering narcoterrorism which extends beyond national boundaries;
>
> Sixthly, the existing legal framework in terms of penal and procedural laws and the adjudicatory system were found inadequate to curb and control organized crime; and
>
> Seventhly, the special law was enacted with "stringent and deterrent provisions" including in certain circumstances, the power to intercept wire, electronic or oral communication.

14. In the light of the above, if facts of the present case are taken into consideration, admittedly, no offence is registered against the applicant showing that he has generated illegal wealth by way of contract killing, extortion, smuggling, and contraband, illegal trade in narcotics, and money laundering etc.. There is no material to show that the existing legal framework work and procedural law are inadequate to deal with the present applicant. None of offences is registered against the applicant showing he had committed the offence to gain illegal wealth.

15. 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.

16. 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.

17. In the light of the above principles, if facts in the present case considered, admittedly, the name of applicant is not mentioned in the FIR. The subsequent statement of the

injured and eyewitnesses are contradictory as to the role of the applicant. There is no material to show that he had committed the offence as a member of organized crime syndicate. The chart shows that all offences registered against the applicant are in his individual capacity. The investigation papers nowhere show that he has committed offences to gain economic gain and pecuniary benefits or other advantages for himself or any other reasons.

18. Thus, there are certainly reasonable grounds to hold that applicability of the MCOC is doubtful. The nexus between the present offences and the earlier offences are also not demonstrated on the basis of some evidence on record.

19. For the reasons recorded above, the application deserves to be allowed, as per order below:

ORDER

1) The criminal application is allowed.

2) Applicant - Shahrukh alias Kasai Shaikh Akram, 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 Organised Crime Act, be

.....13/-

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 !!