



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 26th July, 2023*
Judgment Delivered on: 12th September, 2023

+ **BAIL APPLN. 1863/2023**

SURENDER MANN

..... Petitioner

Through: Ms. Rebecca M. John, Senior Advocate with Mr. Sandeep Sharma, Mr. Chinmay Kanojia, Mr. Pravir Singh and Mr. Nilanjan Dey, Advocates.

versus

STATE THROUGH SHO

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State. Insp. Manoj Kumar, Special Cell/NDR, Lodhi Colony.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. By way of the present application, the applicant seeks regular bail in the FIR No.252/2018 dated 25th May, 2018, under Sections 3/4 of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA) registered at Police Station Alipur.
2. The first bail application of the applicant preferred before the Trial Court was rejected *vide* order dated 11th October, 2021. Subsequently, the applicant filed a bail application before this Court, which was dismissed as withdrawn *vide* order dated 1st March, 2023. Thereafter, the second bail

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application filed before the Trial Court was dismissed on 15th May, 2023. Hence, the present application has been filed.

3. The case set up by the prosecution is as under:
 - 3.1 The FIR No.252/2018 dated 25th May, 2018 was registered against the 'Organised Crime Syndicate' (Syndicate) led by Jitender @ Gogi and his associates. The members of this Syndicate are involved in heinous offences including murder, robbery, extortion among others.
 - 3.2 The accused Jitender @ Gogi stated in his disclosure statement dated 8th April, 2021, that he had settled the dispute of Rs. 3 crores of the present applicant and also invested some proceeds of crime with him.
 - 3.3 During investigation, it was found that the Protected Witness 'D' had made a complaint dated 7th July, 2020 to the Deputy Commissioner of Police (DCP), Outer North, Delhi, stating that the present applicant had misappropriated his payment of Rs. 3 crores and threatened to kill him. This complaint was later transferred to the Economic Offences Wing (EOW) and the EOW registered the FIR No.86/2021 on 22nd June, 2021, under Sections 409/420/506/120 of the Indian Penal Code, 1860 (IPC) at Police Station EOW, Delhi.
 - 3.4 During investigation, statements of various witnesses were recorded and it was revealed that the Gogi Gang used to threaten persons on behalf of the applicant and the applicant used to provide shelter to its members.
 - 3.5 Based on the material on record, it was revealed that the applicant was an active member of the Syndicate and was arrested on 28th June, 2021.
4. In the Status Report filed by the State it has been submitted as under:

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- I. During investigation, Protected Witness 'D' has deposed before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (CrPC) that the applicant called him on phone and handed over the phone to Jitender @ Gogi, who threatened him over the phone on behalf of the applicant. He further deposed that the applicant called him in person in Alipur area and got him threatened by one Deepak 'Boxer', who is an alleged member of the Gogi Gang.
- II. Protected Witness 'E' has also stated in his statement under Section 164 of the CrPC before the Magistrate that the applicant along with another person threatened Protected Witness 'D' and on account of such threats Protected Witness 'D' did not come out of his house for a week.
- III. Protected Witness 'F' also deposed before the Magistrate under Section 164 of the CrPC and stated that he had met Gogi at the house of the applicant.
- IV. Witness Ajit Kumar Bhadani in his statement under Section 161 of the CrPC given to the Assistant Commissioner of Police (ACP) has stated that when he demanded his money back from the applicant, the applicant threatened to get him killed by Jitender @ Gogi.
- V. The applicant is also stated to have purchased properties in the name of his family members at a price which is grossly under-valued as compared to the actual cost of properties. The applicant has failed to explain how the balance money has been obtained to purchase the aforesaid plots.
- VI. Reliance has been placed on the judgment of the Co-ordinate Bench of this Court in *Kamlesh Kothari v. State (NCT of Delhi)*, 2023 SCC OnLine Del 3984.

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5. The learned senior counsel appearing on behalf of the applicant has made the following submissions:
- I. The applicant has been in custody since 28th June, 2021 and the trial in the present case would take a long time to complete since five charge sheets have been filed and more than 200 witnesses have been cited by the prosecution.
 - II. The disclosure statement of Jitender @ Gogi dated 8th April, 2021 is inadmissible in evidence under Section 25 of the Indian Evidence Act, 1872, as the statement was recorded by the ACP and not by the DCP and therefore, falls short of the mandate of Section 18 of the MCOCA.
 - III. The statements made by the Protected Witness 'D' cannot be relied upon as he has gone beyond his statements made in FIR No. 86/2021. Further, the said statements cannot be taken in to consideration as no CDRs have been have been collected to substantiate the allegations.
 - IV. The statement of Protected Witness 'E' cannot be relied on as he is himself a co-accused in the FIR No. 86/2021 and was specifically attributed the role of threatening the complainant. The statements of the remaining witnesses are unreliable as being hearsay or irrelevant to the facts of the present case.
 - V. Various properties of the applicant and his family members have been purchased through registered documents and are *prima facie* authentic under Section 91/92 of the Indian Evidence Act, 1872. The applicant and his brother had received Rs.7.80 crores from the sale of their ancestral land at Alipur, Delhi and the aforesaid funds were used for purchasing the said properties. There is no evidence to show that any

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alleged act of the applicant was done for the benefit of or on the direction of the Syndicate.

- VI. The charges under the MCOCA are not sustainable as only one charge sheet has been filed against the applicant and therefore, the case would not be covered under Section 2(d) of the MCOCA. In this regard, reliance has been placed on the judgment of the Supreme Court in ***Mohd. Ilyas v. State of Gujarat***, 2022 SCC OnLine SC 713.
6. I have heard the counsels for the parties and perused the material on record.
7. MCOCA is a special Act for the prevention and control of criminal activities by ‘Organized Crime Syndicates’ or ‘Gangs’ and other connected matters. MCOCA was made applicable to the NCT of Delhi with effect from 2nd January, 2002.
8. The term ‘continuing unlawful activity’ has been defined under Section 2(d) of the MCOCA as under:

*“2(d) “continuing unlawful activity” means 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 organised crime syndicate or on behalf of such syndicate **in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.**”*

9. The term ‘organized crime’ has been defined under Section 2(e) of the MCOCA as under:

“2(e) “organised crime” means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or

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other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.”

10. The term ‘organized crime syndicate’ has been defined under Section 2(f) of the MCOCA as under: -

“2(f) “organised crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.”

11. In **Kavitha Lankesh v. State of Karnataka**, (2022) 12 SCC 753, the Supreme Court while dealing with the Karnataka Control of Organised Crime Act, 2000, the provisions of which are *pari materia* with the MCOCA, has observed that the requirements of more than one charge sheet is in respect of an ‘organized crime syndicate’ and not in respect of each person who is alleged to be member of such syndicate. The relevant observations are set out below:

“27. ...Be it noted that requirement of more than two charge-sheets is in reference to the continuing unlawful activities of the organised crime syndicate and not qua individual member thereof.”

12. The Supreme Court in **Zakir Abdul Mirajkar v. State of Maharashtra**, 2022 SCC OnLine SC 1092, has reiterated that multiple charge sheets need not be filed in respect of each person who is alleged to be a member of a syndicate and it is sufficient if more than one charge sheet is filed against the ‘organized crime syndicate’. The relevant extracts are set out below:

“84. The appellants have argued that in the preceding ten years, more than one charge-sheet has not been filed in respect of each of them. This submission does not hold water. It is settled law that more than one charge sheet is required to be filed in respect of

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the organized crime syndicate and not in respect of each person who is alleged to be a member of such a syndicate.

xxx

xxx

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86. Other courts, too, have held that persons who are alleged to be members of an organized crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. ***Rather, charge-sheets with respect to the organized crime syndicate are sufficient to fulfil the condition in Section 2(1)(d)."***

13. The Supreme Court in ***Mohd. Ilyas*** (supra), relied by the applicant, while dealing with the Gujarat Control of Terrorism and Organised Crime Act, 2015 (GCTOC Act), which is analogous with the MCOCA, had laid down the following principles for invoking the GCTOC Act:

"9. 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 cognizable 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."

14. In view of the principles laid down by the Supreme Court above, it is not a requirement that multiple charge sheets have to be filed individually against all members of an organised crime syndicate. In the present case, even if there is only one charge sheet filed against the applicant, more than five charge sheets have been filed against the Syndicate. In view thereof, I do not

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find merit in the submission made on behalf of the applicant that the activities of the applicant cannot be covered under Section 2(d) of the MCOCA.

15. Now reference may be made to Section 21(4) of the MCOCA:

“21 (4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

16. Section 21(4) of the MCOCA lays down the conditions for grant of bail for a person charged under the provisions of the MCOCA. The twin conditions, which are *pari materia* with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, provide that the Court should be satisfied that:

- (i) there are reasonable grounds for believing that the petitioner has not committed an offence and,
- (ii) he is not likely to commit an offence while on bail.

Both the aforesaid conditions have to be satisfied before the grant of bail. Therefore, based on the material on record, the Court has to arrive at a *prima-facie* view regarding the aforesaid.

17. A Co-ordinate Bench of this Court in **Kamlesh Kothari** (supra), while considering an application for grant of bail in proceedings under the MCOCA, has held as under:

“75. It is a settled proposition that such provision do not impose complete restriction on the grant of bail. It is also a settled proposition that at this stage the court cannot evaluate the material

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*on the scale which is required at the time of the conclusion of the trial. The court has not to record the finding of guilt or acquittal at this stage. **The court is only required to see that whether there are reasonable grounds to believe that the accused persons have not committed offence. The reasonable grounds as stated above are more than prima facie grounds. It can also be said that at this stage, the court has to see the preponderance of probabilities. If there is preponderance of probabilities that the accused can be convicted on the material available, the bail is liable to be rejected.***

*76. It is a settled proportion that at the stage of bail, the meticulous examination of evidence is not required at this stage so as to not cause any prejudice to the parties. The probative value of the witnesses also cannot be examined at this stage. **At the stage of bail, the mini trial is totally prohibited.** This court therefore has not entered into the detailed discussion on the statement of the witnesses and the disclosure/confessional statement of the accused persons. However, the record amply indicates that Leena Paulse was involved in the organized crime syndicate. It is unbelievable that such huge amount of money were coming in her account and she was accepting the same only as a dutiful wife. It does not appeal to the reason that the high end cars were being purchased, the flights were being taken on charter without having any knowledge about free flow of money. It is beyond comprehension that a lady who is well educated will not know the source of money. The other grounds taken by the petitioner relating to her Fundamental Rights and right to be mother are liable to be rejected as she does not fulfill the twin conditions as laid under Section 21(4) MCOCA. It is also pertinent to note that her husband is also in custody.”*

18. Now, I proceed to consider the present bail application in light of the aforesaid principles.

19. In the present case, Protected Witness ‘D’ has stated in his statement under Section 164 of the CrPC that when he demanded his money back from the applicant, the applicant threatened to get him killed by using the name of Jitender @ Gogi. Subsequently, the applicant called the Protected Witness ‘D’

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and put him on call with Jitender @ Gogi, who threatened to kill him if he demanded his money back from the applicant. The applicant also called the aforesaid witness in person and got him threatened by one Deepak 'Boxer', who is also a member of the aforesaid gang.

20. Protected Witness 'F' has also deposed that he has seen Jitender @ Gogi and Fazza at the house of the applicant a couple of times.

21. The evidence on record also suggests that the applicant has purchased various movable and immovable properties including land and cars worth over Rs.10 crores, without being able to explain the source of income. This factor also leads to an inference that proceeds of crime of the aforesaid gang have been used to purchase the aforesaid assets.

22. It is pertinent to note that charges have already been framed against the applicant on 23rd December, 2022 and the trial is at the stage of prosecution evidence.

23. In view of the discussion above, in my considered view, the twin conditions as mentioned in Section 21(4) of the MCOCA are not satisfied. There appears to be evidence on record that the applicant is involved in offences under the MCOCA. I cannot persuade myself to believe that the applicant, if released on bail, is not likely to commit further offences under the MCOCA.

24. Accordingly, the present bail application is rejected.

25. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

AMIT BANSAL, J.

SEPTEMBER 12, 2023/rt

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