2024:BHC-AUG:7073

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 315 OF 2024

VASANT DNYANDEO KADAM @ DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. Rajendrraa Deshmukh, Senior Advocate along with Mr. Vishal A. Chavan, Advocate instructed by Mr. Devang R. Deshmukh
APP for Respondent : Mr. A. S. Shinde
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CORAM : S. G. MEHARE, J.

DATE : 26-03-2024

PER COURT :-

1. Heard the learned senior counsel for the applicant and the learned A.P.P. for the respondent/State.

2. The applicant/accused is seeking bail in C.R.No.0020 of 2023 registered with Palam Police Station, Palam, Taluka Palam, District Parbhani, for the offences punishable under Sections 394, 395, 201, 120B read with Section 34 of the Indian Penal Code and Sections 3 and 4 read with Section 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (for short, “MCOCA”).

3. The incident happened on 04.02.2024 at 8.00 p.m. in a jewellary shop situated in the market. The applicant was arrested

on 17.02.2023. He was sent in police custody remand (PCR) till 22.02.2023. However, then MCOCA was applied and his MCR was extended till 28.04.2023.

4. The applicant seeks bail on the grounds that he has no role to play. A fake and baseless allegations have been levelled against him that he did rekey. He is not a member of the organized crime syndicate. The legal requirement to have the chargesheet more than two for the same offences has not been fulfilled. He was arrested in the earlier crime which was altogether different from the present crime. The so-called co-accused were not named a member with the co-accused in any crime, and other co-accused were not co-accused in the crime registered against the applicant. The applicant was arrested on 17.02.2023, but before his arrest on 16.02.2023 an illegal recovery of golden, silver ornaments and pistol and cash of Rs.20,000/, has been shown. The said recovery has no connection with the present crime. It was a road side trap. It was not a recovery under Section 27 of the Indian Evidence Act. The allegations of reckey are also unbelievable but it was alleged against him that the applicant intimated other co-accused that the shop was opened. A shop is located in the crowded area. The timing of keeping the shops open is known to the public. Therefore, the allegations do not link him with the organized crime syndicate. There was no evidence against him that he facilitated the other co-accused. He has not been supplied with the Chemical

Analyzar's report, finger print report, tower location and instagram profile and it was not part of the chargesheet.

5. Referring to the definition of 'continuing unlawful activity' under Section 2(d) of the MCOCA, the learned senior counsel argued that copies were not supplied the applicant for the simple reason that he was never the member of the organized crime syndicate. He denied his confessional statement under Section 18 of the MCOCA. His statement was replica of co-accused. He had only 10 to 20 thousand rupees in his bank account. That does not establish the link of the applicant with the so-called crime. He, in his confessional statement specifically stated that he has no per-acquaintance with the co-accused. The prosecution has no evidence of sharing looted property. Therefore, he deserves bail.

6. Per contra, the learned A.P.P. for the respondent has vehemently argued that the recovery of silver and golden ornaments, pistol and cash was done under Section 165 of the Code of Criminal Procedure (for short, "Cr.P.C."). The applicant was formally arrested when he was trapped by road side carrying a huge ornaments worth Rs.6,00,000/- (Rs.Six Lakhs) with pistol. The applicant to date has no explanation about the custody of such a huge property. He submits that it was not recovery under Section 27 of the Indian Evidence Act. The provisions of MCOCA also apply to the newly added member of a crime syndicate. The

confessional statement under Section 18 of MCOCA is admissible in evidence. Twenty Four crimes were registered against the syndicate for which the applicant was working. Section 21(4) of the MCOCA is also apply.

7. To bolster his arguments, he relied on the case of ***Zakir Abdul Mirajkar Versus State of Maharashtra and others, 2022 All MR (Cri) 3798***. He submits that the Hon'ble Supreme Court, in this case relied on the case of ***Govind Sakharam Ubhe Versus State of Maharashtra, 2009 All.M.R. 1903, Bombay High Court,*** and observed that the question of whether the appellants are in fact abetting organized crime in this manner, is to be determined at the stage of trial. Similarly, the question, whether offences under the IPC would attract or the MCOCA, in the present case is to be determined at the stage of trial and depends on the facts and circumstances of each case. It has been held that more than one chargesheet is not required to be filed with respect to each accused person.

8. Referring to the judgment of ***Govind*** (supra), the Hon'ble Supreme Court observed that "The link with the 'organized crime syndicate' is the crux of the term 'continuing unlawful activity'. The seizure of a huge quantity of golden ornaments, pistol and cash is the link to prove *prima facie,* that, he was working for the organized crime syndicate and participating in continuing unlawful

activity.

9. He further relied on the case of ***Vikram Singh and Others Versus State of Punjab, 2010 (2) SCC (Cri) 26*** and argued that the formal arrest under Section 46(1) of the Cr.P.C. should not be accepted in this case as the accused was road trapped carrying a huge golden and silver ornaments. He fairly concede that the recovery done from the applicant was not according to Section 27 of the Indian Evidence Act. Therefore, custody of the applicant required for that section, could not be intermingled with case at hand. The applicant has been arrested during the course of investigation and on the tips. Though seizure panchnama of ornaments drawn before his formal arrest, he was under arrest under Section 46(1) of the Cr.P.C. He prayed that considering the gravity of the offence and prima facie evidence against the applicant, the application may be dismissed.

10. Per contra, learned senior counsel for the applicant, in reply, submits that in the absence of any evidence at this juncture it could not be believed that there was evidence against the applicant that there were chargesheets more than one filed against the applicant. He referred to Section 2(d), the definition of 'continuing unlawful activity', and vehemently argued that there is no iota of evidence against the applicant that the applicant was a member of the organized crime syndicate. He also referred to the

definition of ‘organized crime’ under Section 2(e) of the MCOCA and further argued that there is no evidence to show that the applicant participated in the alleged crime for gaining pecuniary benefits. He further referred to definition of ‘organized crime syndicate’ defined under Section 2(d) of the MCOC Act and argued that there is no link to prove that the applicant was a member of the so-called organized crime syndicate. He referred to observations of the case of ***Govind*** (supra) referred to in the case of ***Zakir*** (supra) and vehemently argued that there shall be a link of the accused with the organized crime syndicate and continuing unlawful activity. In this case, such a link is missing. Therefore, the applicant cannot be roped in.

11. He also replied the arguments of the learned A.P.P. made on relying case of ***Vikram*** (supra). He submitted that it was not a recovery under Section 27 of the Indian Evidence Act, but it was a road side trap. For recovery purpose, his arrest was essential that too in the crime. The accused was arrested subsequent to the so-called seizure panchnama.

12. The first objection that there should be more than one chargesheet filed against the applicant before the competent court to attract MCOCA, is concerned, the Hon’ble Supreme Court in the case of ***Zakir*** (supra) has laid down the law that more than one chargesheet is required to be filed in respect of organized crime

syndicate and not in respect of each person who is alleged to be a member of such syndicate. The learned A.P.P. is correct in arguing that there are new comer members in the organized crime syndicate. Therefore, absence of any chargesheet with the co-accused who were indulged in the organized crime syndicate, may not be a ground to consider that the applicant is not involved in the organized crime.

13. The second legal point as has been raised by the learned senior counsel for the applicant that the recovery of golden, silver ornaments and pistol and cash has been done by a road trapping, therefore, recovery is not sufficient to rope him in. It is admitted that the applicant was arrested in a road trap and was found carrying a huge golden and silver ornaments and a pistol.

14. Section 165 of the Cr.P.C. empowers an investigating officer to make a search if he believes that it is necessary for the purpose of investigation into any offence. On getting such information done, he may make a search. Sub-section (2) thereof further empowers him to conduct the search in person. However, sub-Section (3) thereof empowers, if he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search.

15. Before the arrest of the applicant, the crime was registered and it was under investigation. The looted property was not recovered. So, obviously the Investigating Officer was investigating the crime and collecting the secret information for detecting the crime. In the course of investigation, the applicant was trapped on the road carrying with a huge golden ornaments, pistol and cash. The burden was on the applicant to *prima facie* satisfy about the ownership of the said property. For such a recovery, the law does not contemplate the arrest as required under the Cr.P.C. Taking a search of a person against whom the Investigation Officer has a doubt, his apprehension is sufficient. Soon after apprehending such person, if anything found in his custody and it is not explained, the person may be searched and panchnama may be drawn. Therefore, in this case, considering the peculiar facts that the applicant was trapped on the road with so-called looted property and pistol, a seizure panchnama has been drawn against the arrest as required under the Cr.P.C. is not bad in law. The recovery of such a huge property *prima facie* linked with the crime in this case. It is sufficient to *prima facie* believe that he has connection with the organized crime syndicate against which about 21 crimes were registered.

16. Considering the facts of the case, it may not be required that there shall be a joint crime registered against the applicant with

the other co-accused. In a crime there is no record of all the members of the crime syndicate and it would not also be expected. The only source for investigation is to *prima facie* to show the link of the accused with a organized crime syndicate. In the circumstances, the statement of the accused under Section 18 of the MCOCA has relevance. His statement cannot be thrown at the threshold. It has its own importance.

17. Though in absence of not supplying the copies of C.A.report to the investigation, finger print report, tower location and instagram profile, the evidence of recovery of the looted property is sufficient to believe the prosecution case.

18. Learned A.P.P. has strongly opposed the application and referred to clause (b) of sub-section 4 of Section 21 of the MCOCA which provides that where the Public Prosecutor opposes the bail 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.

19. The requisite condition for granting bail under this Act was that the Court should satisfy 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. If these conditions are not satisfied, the bail may be refused. The Court discussed the facts and arguments of the respective learned counsel in detail

and observed that the prosecution has proved the link of the accused with organized crime syndicate.

20. *Prima facie*, there are reasons to believe that he was involved in the crime. May he not able to create actual role but seems to have facilitated the co-accused to carry out the looted property but to his unfortunate, he was apprehended and the looted property has been recovered from him.

21. For the above reasons, this Court is of the view that the applicant has no case for bail. Hence, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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