IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4149 OF 2023

Suraj Arun Pote ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Sumit Tiwari, Mr. Jugal Kanani and Mr. Amrish Salunke, for the Applicant.
Mr. Prashant Jadhav, APP, for the Respondent/State.

RESERVED ON : APRIL 17, 2024
PRONOUNCED ON : MAY 09, 2024
CORAM : N. J. JAMADAR, J.

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This is an application for bail in MCOC Special Case No. 141 of 2022 arising out of FIR bearing C.R. No. 97 of 2021, registered with Meghwadi police station for the offences punishable under sections 120-B, 307, 326, 188, 143, 144, 147, 148 and 149 of Indian Penal Code, 1860 and section 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA).

3. The indictment against the applicant and the co-accused is that the applicant is the leader of an organized crime syndicate. 17^{th}

April, 2021 was the birth day of the first informant. The first informant celebrated his birthday behind Pratap Nagar Bus stop, Jogeshwari (E), Mumbai. Post midnight, while the first informant was returning to his home, his friend Naresh Navge was sitting on a chair near Gupta Flower Mart, Pratap Nagar. Somebody gave a call to the first informant. The first informant thought that somebody might have called him to wish him on his birthday. The first informant turned back and noticed that co-accused Sandip Pawar (A2) and Tushar Jagdale (A3) were approaching towards the first informant. As there was a quarrel between the first informant and Sandip Pawar (A2) and Tushar Jagdale (A3) sensing that Sandip Pawar (A2) and Tushar Jagdale (A3) might be approaching to beat the first informant, the latter tried to run away. Sandip Pawar (A2) gave a blow by means of a sharp weapon on the face of the first informant. Yet, the first informant succeeded to flee away. Thereafter, Tushar Jagdale (A3) assaulted Naresh Navge by means of a blunt side of a sharp weapon. The first informant alleged that after the assault, the applicant and another person who were waiting on scooters nearby, gave a signal to the assailants and Sandip Pawar (A2) and Tushar Jagdale (A3) fled away on those scooters.

4. The applicant came to be arrested on 20th May, 2021. The provisions contained in MCOCA were invoked. The competent authority granted sanction under section 23(2) of the MCOCA on 18th January, 2023.

5. Mr. Ponda, learned senior counsel for the applicant submitted that the co-accused Uday Salpekar(A4), Rahul Mhaske(A5) and Rahul Dighe (A6) have been released on bail by this Court. While releasing the co-accused on bail, this Court has adverted to the manner in which the first informant and the witnesses have developed the case to suit the prosecution, especially to implicate the applicant. Mr. Ponda submitted that the applicant indeed has antecedents. A number of crimes, as indicated in paragraph 59 of the affidavit in reply, have been registered against the applicant. However, the apparent inconsistency in the prosecution case qua the applicant in the underlying offence in which the MCOCA is invoked deserves to be taken into account. By invoking the provisions contained in MCOCA, an endeavour has been made to keep the applicant behind the bars only on the basis of the antecedents. It was further submitted that the applicant has been in custody since three years. It is unlikely that the trial can be concluded within a reasonable period. Thus, having regard to the

role attributed to the applicant, he deserves to be enlarged on bail.

6. In opposition to this, Mr. Jadhav, the learned APP submitted that the presence of the applicant at the time of the alleged occurrence has been specifically reported by the first informant. There is material to indicate that the applicant instigated the co-accused assailants. A number of witnesses have seen the applicant exhorting the assailants to mount the assault. Moreover, the applicant being a gang leader and as many as 14 cases have been registered against the applicant, no case for grant of bail is made out as the interdict contained in section 21 of the MCOCA comes into play.

7. As regards the complicity of the applicant, it is imperative to note that in the FIR, the first informant had alleged that after the first informant was assaulted by Sandip Pawar (A2), he ran away. The co-accused Tushar Jagdale (A3) assaulted Naresh. After Sandip Pawar (A2) unleashed blow by means of sharp weapon, the applicant and his unknown associates gave signal to Sandip Pawar (A2) and Tushar Jagdale (A3) and the latter fled away on their scooters. In the supplementary statements, the first informant stated that while Sandip Pawar (A2) and Tushar Jagdale (A3) were

charging on the first informant, he had seen the applicant exhorting the assailants to kill the first informant. The applicant had allegedly exhorted the co-accused Rahul Dighe (A6) to eliminate the first informant and thereafter they fled away on the motor-cycle.

8. In the statement of Naresh who was also allegedly assaulted by Tushar Jagdale (A3), which was recorded on 6th July, 2021, it was alleged that at the time of the alleged occurrence, the applicant was armed with a hockey stick and co-accused Uday Salpekar(A4) had a bamboo stick. Post arrest of the applicant on 21st May, 2021, the applicant allegedly made a disclosure statement leading to recovery of the hockey stick.

9. Prima facie, the prosecution version progressively changed from the applicant being an accessory after the fact, to being the person who instigated Sandip Pawar (A2) and Tushar Jagdale (A3) to assault the first informant, to that of being an assailant armed with a hockey stick. However, the matter cannot be looked at from this limited perspective of complicity in the underlying crime.

10. The thrust of the submission on behalf of the prosecution was that the applicant is the gang leader of the organized crime

syndicate. Thus, the interdict contained in section 21 of the MCOCA comes into play with full force and vigor. Indeed, as many as 13 crimes, apart from the instant crime, have been registered against the applicant since the year 2011 in which cognizance for the offence punishable with imprisonment for three years or more has been taken by the Courts.

11. In the affidavit in reply the prosecution has tabulated the crimes registered against the applicant as under:-

Sr.	Police Station	C.R.Nos./ Sections	Status
1	Dharavi	256/2011 U/s. 324, 323, 504,506 read with 34 of IPC	Court Pending
2	Meghwadi	81/2012 U/s.143, 144, 147, 148, 149, 326, 341 of IPC	Court Pending
3	Dharavi	210/2012 U/s.307, 341, 506(ii), 212, 120-B of IPC r/w.3, 25, 27 of Arms Act	Court Pending
4	Meghwadi	42/2014 U/s.307, 302, 452, 323, 120-B of IPC	Appeal pending in the High Court
5	Meghwadi	20/2017 U/s.452, 324, 506(ii), 427,	Court Pending
6	Meghwadi	89/2017 U/s.323, 509, 506(ii) 34 of IPC.	Court Pending
7	Meghwadi	193/2017 U/s.324, 323, 504, 506(ii), 143, 147, 149 of IPC r/w. Sec. 142 of Maharashtra Police Act.	Court Pending
8	Meghwadi	323/2017 U/s.324, 323, 504, 506(ii), 34 of IPC r/w.142 of Maha. Police Act.	Court Pending
9	Meghwadi	202/2018 U/s.324, 323, 506(ii) of IPC	Court Pending
10	Andheri	112/2019 U/s.353, 504, 323, 34 of IPC	Court Pending
11	Meghwadi	57/2020 U/s. 324, 323,504, 506(ii) of IPC	Court Pending
12	Meghwadi	37/2021 U/s.452, 387, 306, 141, 142, 144, 147, 149, 506(ii) of IPC r/w.37(1), 135 of Maharashtra Police Act	Court Pending

13	Meghwadi	97/2021, U/s.307, 326, 188, 143, 144, 147, 148, 149, 120-B of IPC r/w. 37(1)(a), 135 of Maharashtra Police Act, sec.3(i)(ii), 3(2), 3(4) of MCOCA Act. (**Present offence)**	Court Pending
14	Meghwadi	155/2021 U/s. 324, 504, 506(ii), 427, 141, 143, 144, 147, 148, 149 of IPC r/w. 37(i)(a) read with 135 of Maharashtra Police Act.	Court Pending

12. A bare perusal of the aforesaid chart would indicate that the applicant has allegedly been indulging in serious offences with alarming frequency. A continuous course of criminal activity is prima facie evident. It is not the case that the crimes have been registered against the applicant in the distinct past. Even post registration of the offence, another crime was registered against the applicant.

13. The submission on behalf of the applicant that in the underlying offence, the applicant has no role, apart from the alleged presence at the time of alleged occurrence, loses sight of the nature of the continuing unlawful activity envisaged by section 2(1)(d) of the MCOCA. It is not necessary that each and every member of the organized crime syndicate should actually participate in the continuing unlawful activity in each of crimes arrayed against the organized crime syndicate. The members of the organized crime syndicate may operate jointly or singly. They may operate in

different modules. An individual member may indulge in an organized crime as a member or on behalf of organized crime syndicate. Thus, the MCOC Act has been enacted to make special provisions for control of, and for copping with the, criminal activity by organized crime syndicate or gang.

14. A useful reference in this context can be made to the observations of Division Bench of this Court in the case of **Govind Sakharam Ubhe v. State of Maharashtra**[1]**.** In paragraph No. 37, it has been held as under:-

> 37] But even otherwise, if all provisions are read together we reach the same conclusion. Section 2(1)(d) which defines continuing unlawful activity' sets down a period of 10 years within which more than one charge-sheet 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 MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA. This is evident from section 3(4) of the MCOCA which states that any person who is a member of an organized crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum of fine of Rs.5 lakhs. The charge

1 2009 ALL MR (Cri) 1993

> under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the organized crime syndicate is the crux of the term continuing unlawful activity. If this link is not established, that person cannot be roped in.
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> (emphasis supplied)

15. In the case at hand while granting sanction under section 23(2) of the MCOCA, 1999, the competent authority has recorded that the instant crime has been committed with the object of gaining supremacy and other advantage by use of criminal force and violence. Therefore, the fact that the applicant had not taken an active part in the assault on the first informant pales in significance. The role initially attributed by the first informant, in the FIR, to the applicant of being an accessory after the fact, in the context of the aforesaid continuous unlawful activity, prima facie falls within the tentacles of the offences punishable under section

3(1)(ii), 3(2) and 3(4) of the MCOCA.

16. In the aforesaid view of the matter, I am not inclined to accede to the submissions on behalf of the applicant that no prima facie case is made out against the applicant. The sheer weight of the applicant's antecedents itself dis-entitle the applicant to claim parity with the co-accused, who have been released on bail. The appallation to the applicant of being a "gang leader" is prima facie borne out by the crimes registered against the applicant. This conduct of the applicant, as reflected from his antecedents, also dissuades the Court from recording a finding that the applicant may not indulge in identical offences, if released on bail.

17. I am, therefore, not inclined to release the applicant on bail. Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)