2024:BHC-NAG:2372

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

CRIMINAL APPLICATION (BA) NO. 79 OF 2024

Vinod S/o Vitthalrao Sontakke
..VS..
State of Maharashtra through PSO, P.S. Sonegaon, Nagpur

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

Mr. D.R. Bhoyar, Advocate for applicant.
Mrs. M.A. Barabde, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : FEBRUARY 27, 2024

This is an application for grant of bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 09.04.2023 in connection with the Crime No.69/2023, registered with Police Station Sonegaon, Nagpur for the offence punishable under Section 394, 397, 120(B) and 506(B) read with Section 34 of the Indian Penal Code and Section 4 and 25 of the Arms Act and Section 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "MCOC Act" for the sake of brevity).

2. The accusation against the present applicant is on the allegations that the applicant is the Member of Organized Crime Syndicate and in perusals of the common object of said syndicate, committed the offence of dacoity and therefore, the provisions of the MCOC Act are made applicable.

3. As per the allegations in the First Information Report (FIR) lodged by Suresh Sadashiv Potdukhe that in the intervening night of 03.04.2023 to 04.04.2023, he was sleeping in his bedroom, at the relevant time, three unknown persons entered into his bedroom assaulted him and committed the dacoity by stealing the golden, silver ornaments and cash amount, total worth of Rs.32,00,000/-. On the basis of said report, police have registered the crime against the present applicant. During investigation, it reveled that the applicant is the member of organized crime syndicate and therefore, in view of Section 23(2) of the MCOC Act, the approval was granted to apply the provisions of MCOC Act.

4. It is submitted by the learned Counsel for the applicant that as far as the involvement of the present applicant is concerned, his presence was not there at the scene crime. As per the allegation of the prosecution, the present applicant was supervising the act of the informant and was giving the information, he was a member to the criminal conspiracy hatched by him and the other co-accused to commit the dacoity at the house of the informant and in perusals of the said conspiracy, the other co-accused have committed the dacoity and thereby committed an offence. The learned Counsel for the applicant submitted that as far as the application of provisions of MCOC Act are concerned, no offence is registered against the present applicant except the present crime. There is no material to show that the applicant was the member of the organized crime syndicate and in perusals of the common object of the said syndicate he had committed the offence. He further submitted that as far as criminal conspiracy is concerned, there is no direct evidence to connect the present applicant with the alleged offence to show that he is a part of the said conspiracy. He submitted that only two circumstances on which the prosecution relied upon, one is the recovery of Rs.2,00,000/- from the present applicant and telephonic communication between the present applicant and the other co-accused on the basis of the CDR. Except these circumstances, there is absolutely no material against the present applicant to connect him with the alleged offence. Now the investigation is completed, charge-sheet is filed and further incarceration of the present applicant is not required. He submitted that the present applicant is residing along with other family members who are serving at various places and, therefore, the availability of the amount of Rs.2,00,000/- cannot be an incriminating circumstance to connect the present applicant with the alleged offence. He submitted that considering all these aspects, the applicant deserves to be released on bail.

5. Learned Additional Public Prosecutor Mrs. Barabde strongly opposed the application on the ground that the circumstantial evidence sufficiently shows the involvement of the present applicant in the alleged offence. She submitted that the constant communication between the present applicant and other co-accused and the recovery of the amount of Rs.2,00,000/- at the instance of the accused of the house of the applicant sufficiently shows his involvement in the alleged crime. She further submitted that the role assigned to the present applicant which revealed from the investigation that present applicant was in contact with the main accused and was keeping a watch on the movement of the informant and had given all the details of the complainant to the other co-accused. The present applicant had given information about the location of the complainant to the other co-accused. The CDR *prima facie* shows that they are in constant contact with each other. The role of the present applicant is relevant in the commission of the present crime. The present applicant has given all the details of the complainant due to which main accused in association with other co-accused was able to conduct the said crime. Thus, considering the *prima facie* material against the present applicant, the application for grant of bail deserves to be rejected.

Learned APP further submitted that to invoke the provisions of MCOC Act, it is not necessary that offence shall be registered against the present applicant even his association with the other co-accused who are the members of the Organized Crime Syndicate is sufficient to attract the provisions of MCOC Act and prays for rejection of the application.

6. After hearing both sides and perusal of the investigation papers, it reveals that the involvement of the present applicant is revealed from the statement of the co-accused. The co-accused by giving the memorandum statement disclosed that present applicant is the person involved in the said crime and was a part of the conspiracy. During investigation, the Investigating Officer recorded the memorandum statement of the present applicant and at his instance, the amount of Rs.2,00,000/- is recovered from the house of the present applicant. The another circumstance on which the prosecution relied upon shows that prior to the incident, there was constant communication between the present applicant and co-accused Shubham Manke from 23.03.2023 to 04.04.2023 which shows that there were 17 calls made between them. The call details further shows that Rushikesh Pendle and present applicant have also communicated with each other. The other co-accused Vinayak Mudafale and present applicant has exchanged the calls 103 in numbers. Vinayak has called on 54 occasion to the present applicant on 01.11.2022 to 04.04.2023, whereas the present applicant has called him on 49 occasions. The call between the present applicant and co-accused Pawan Atram also shows that between 12.11.2022 to 04.04.2023 there were exchange of 98 calls, out of which all 38 calls were by Pawan Atram and present applicant has called him on 60 occasions. Thus, this material sufficiently shows that there was a constant call between the present applicant and other co-accused.

Though, it is submitted by the learned Counsel for the applicant that applicant is a taxi driver and he might have received the said calls to hire the taxi is not acceptable at this stage considering the number of calls received by the present applicant.

7. 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 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 charge-sheets 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.

8. Thus, the MCOC Act contemplates a situation where a group of persons as members of organized 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 purpose. 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 charge-sheets have been filed before the competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

9. 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 and (e) in respect of which more than one charge-sheet have been filed before a competent Court.

10. 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 charge-sheets have to be filed. The members of the crime syndicate operate either singly or jointly in commission of organized crime. They operate in a 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.

11. After scrutinizing the material on record on the rigor envisaged under Section 21(4) of the MCOC Act. It is well settled principal that the stringent provisions fetter, to a large extent, the discretion of the Court to grant bail unless the material on record warrants recording a satisfaction of existence of reasonable grounds to believe that the accused may not be involved in offence punishable under the MCOC Act and the accused is not likely to commit an offence under the MCOC Act, if released on bail.

12. The satisfaction that reasonable grounds exists to believe that the accused is not involved in an offence under the MCOC Act, enjoins upon the Court a duty to probe deeper into the material on record. A case which is stronger than a *prima facie* case, and the existence of substantial cause and circumstances which individually may impel the Court to record the satisfaction which is envisaged, is necessary to unshackle the fetters. However, it is equally well settled, that the fetters cannot be stretched too far and the Court is not expected to record a finding of innocence. If on broad probabilities which emerge from the material on record, a satisfaction can be recorded that the accused is not likely to be convicted, the Court would be justified in granting bail.

13. In the light of the above well settled legal position, if the facts of the present case are considered, admittedly, there is a sufficient evidence on record to show the involvement of the present applicant with the alleged offence. In view of the rigor under Section 21(4) of the MCOC Act there should be a ‘sufficient ground’ and the ‘reasonable grounds’ to believe, which are available on record in the present case.

14. In the light of the above principles, admittedly, the *prima facie* material against the present applicant is sufficient to show his involvement and, therefore, in view on rigor under Section 21(4) of the MCOC Act, the application deserves to be rejected. Accordingly I proceed to pass following order :

The Criminal Application is **rejected**.

(URMILA JOSHI-PHALKE, J.)

Kirtak