2024:BHC-NAG:777

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

CRIMINAL APPLICATION (BA) NO.85 OF 2023

Vishal s/o Raju Chavan
Vs.
State of Maharashtra, Through Police Station Officer, Police Station, Umarkhed, District Yavatmal

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

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Mr. P. R. Agrawal, Advocate for applicant.
Mrs. Sneha Dhote, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 08.01.2024
PRONOUNCED ON : 19.01.2024

1. By this application, the applicant is seeking regular bail in connection with Crime No.57/2021 registered with Umarkhed Police Station, District Yavatmal for the offences punishable under Sections 307, 397, 395, 353, 332 of the Indian Penal Code along with Sections 3(1)(iii), 3(2) and 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 basis of report lodged by one Gajanan Vithalrao Suroshe, who claims to be serving as Talathi in the office of Tahsildar, Umarkhed. He lodged report on 24.01.2021 alleging that on 23.01.2021 at about 10.00 p.m., he has received the information that some persons are illegally

excavating the sand from Vidul Khand-1 Canal. Therefore, the Naib Tahsildar Vaibhav Pawar while proceeding towards the spot near Gawande College at about 11.20 p.m. witnessed one tipper was proceeding towards the spot, at the relevant time the person who was in the said tipper called somebody and thereafter, one white colour Car came there with four persons. Out of them, one person was Avinash Chavan, who is the co-accused, the other persons were unknown. The said Avinash Chavan took out the knife and put on the chest of the informant and snatched the mobile worth of Rs.14,000/- and cash of Rs.7,000/-. He further threatened not to stop the vehicle and asked the driver to unload the sand. Accordingly, they have unloaded the sand and fled away, though Tahsildar Pawar asked them not to unload the truck and take the said truck in the Tahsil Office. The Tahsildar was also assaulted by the knife by the accused No.1 Avinash Chavan by giving blow on his stomach. The other persons have assaulted the Tahsildar by fist and kick blows, due to which he has sustained the bleeding injury. The said persons also assaulted the informant by means of rod and informant has sustained the injuries. On the basis of said report, police have registered the crime as aforestated.

3. During initial investigation, the eight accused persons were arraigned as an accused and the applicant is accused No.6 and arrested on 24.01.2021. Initially, the

applicant was released on bail on 02.06.2021, thereafter the State has filed Criminal Application No.55/2021 for cancellation. This Court cancelled the bail, as bail on the ground that the order passed the Sessions Judge is cryptic. In view of the order passed by this Court, applicant surrendered and applied for bail which was rejected. During the investigation, the investigating agency send the proposal for application of provisions of MCOC Act. Accordingly, the approval was granted under Section 23(1)(a) of the MCOC Act. It is alleged that 21 offences are registered against co-accused Avinash Chavan. 28 crimes are registered against another accused Anil Kale and 27 crimes are registered against the co-accused Vikas Ban. Three crimes are registered against co-accused Deepak Chavan and Washim Khan and one crime each against present applicant, Gokul Birla, Vaibhav Wankhede. As per the crime chart, present crime is the only offence registered against the present applicant. As per the case of the prosecution, present applicant is the member of organized crime syndicate and in furtherance of common intention of the said crime syndicate, he is involved in the offence and assaulted the Tahsildar as well as Talathi.

4. As per the contention of the applicant except the presence, there is no other material to connect the present applicant with the alleged offence. Though applicant was put in the identification parade, he was not

identified. Confessional statement of the present applicant is recorded, no overt act is attributed to him.

5. Learned Counsel Mr. P. R. Agrawal for the applicant submitted that prior approval was obtained under Section 23(1)(a) of MCOC Act and charge-sheet is also filed. On perusal of the entire charge-sheet, except the presence of the present applicant with the co-accused, no other material is brought on record. There is nothing on record to show that he is member of organized crime syndicate and in furtherance of the common object of the said syndicate, he has committed any offence. He further submitted that the confessional statement cannot be used against the present applicant, as the provisions of MCOC Act are not attracted against the present applicant. In fact, the entire charge-sheet nowhere shows that the applicant is a member of organized crime syndicate and in furtherance of common object, he had committed the said offence. In fact, the entire charge-sheet only reflects that the applicant was present along with the co-accused. As far as the provisions of the MCOC Act are concerned, there is no link to show that he is a member of a gang formed for commission of the offence for invoking stringent provisions. There must be more than one charge-sheet against the organized crime syndicate. He submitted that if the FIR is perused, it would show that applicant is not named in the FIR. During investigation, the involvement

of the present applicant is revealed to the Investigating Officer, but only role attributed to the present applicant is that he was present along with the co-accused, no other overt act is attributed.

6. Learned Counsel Mr. P. R. Agrawal for the applicant placed reliance on **Mohamad Iliyas Mohamad Bilal Kapadiya Vs. State of Gujarat,** reported in **2022 SCC OnLine SC 713** wherein it is held that two requirements have to be satisfied to attract the provision of MCOC Act. The first one is that an activity undertaken is either singly or jointly as a member of an organized crime syndicate or on behalf of such a crime syndicate. The second one is that in respect of such an activity, more than one charge-sheet must have been filed in the preceding period of last 10 years.

7. He further placed reliance on **Tanaji s/o Narayan Sathe Vs. The State of Maharashtra** reported in **2019 All MR (Cri) 3773** wherein it is held that accused not shown to be involved in main offence of robbery and murder, no material to suspect his being member of organised crime syndicate and involved in its continuous activity. He came on scene post commission of offence. No material to suggest that accused have been wary of offence in question and he consciously bought looted sago bags.

8. He further placed reliance on **Vikas Shamsundar Choube Vs. The State of Maharashtra** reported in **2021 ALL MR (Cri) 4225, Kiran Madhav Hazare Vs. The State of Maharashtra** reported in **2022 ALL MR (Cri) 1332, Criminal Application (BA) 436 of 2021 Prem s/o Chunnilal Yadav (Gwalwanshi) Vs. State through PSO, PS Koradi, Nagpur dated 21.08.2021, Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra** reported in **2022 ALL MR (Cri) 2460, Rajendra and others Vs. State of Maharashtra and others** reported in **2021(1) AIR Bom. R (Cri) 914, Maruti Navnath Sonawane Vs. The State of Maharashtra** reported in **2022 ALL MR (Cri) 2981, Raju @ Haidar @ Mohammed Shahid Mohammed Ibrahim Khan Vs. The State of Maharashtra** reported in **2021 ALL MR (Cri) 1122** and **Bail Application No.2389 of 2021 Aditya Ashok Marne Vs. The State of Maharashtra decided on 30.11.2021**.

9. Per contra, learned APP for the State submitted that present applicant was present along with the co-accused Avinash Chavan who is a gang leader against whom 21 offences are registered 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 confessional statement of the co-accused and the statements of eye witness and injured witness

made out a *prima facie* case against the present applicant as such, the application deserves to be rejected.

10. Having heard both sides and perused the investigation papers, it reveals that an allegation against the applicant is that on the date of incident, he along with other co-accused came on the spot in a Car. The other co-accused Avinash Chavan was holding knife in his hand and gave a blow of knife on the abdomen portion of the Tahsildar, who was discharging his duty. As far as the FIR and various statements are concerned, no specific role is attributed to the present applicant. The confessional statement of the present applicant also shows that on the day of incident he was asked to accompany the co-accused and, therefore, he went along with the co-accused. Admittedly, present applicant is not identified during the identification parade. Except the present crime, there is no single crime registered against the present applicant.

11. 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.

12. 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.

13. 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.

14. 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 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.

15. I have scrutinized 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.

16. 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.

17. The applicant Vishal Raju Chavan, undisputedly, not involved in any criminal activity along with either the alleged gang leader of the organized crime syndicate Avinash Chavan or with any member namely Anil Kale, Vikas Ban, Deepak Chavan, Washim

Khan, Gokul Birla or Vaibhav Wankhade prior to the registration of the present crime. I have not came across any material in the charge-sheet to link the present applicant Vishal Chavan either with the earlier offences registered against the co-accused or with the activities of the organized crime syndicate, generally speaking.

18. Considering the material which according to the prosecution shows the role of the present applicant in the crime that he is not named in the FIR, but during investigation, his name was revealed. Admittedly, he is not identified by the informant or the injured during the identification parade. The role attributed to the present applicant is only to the extent of his presence along with the other co-accused.

19. In the light of the above, if facts are taken into consideration, admittedly, no offence is registered against the applicant showing that he has generated any illegal wealth by involving himself in a continuous illegal activity. There is no material to show that the existing legal framework and procedural law are inadequate to deal with the present applicant. Except the present offence, none offence is registered against him showing that he had committed the offence to gain illegal wealth.

20. 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.

21. Insofar as the provisions of Section 21(4) of the MCOC Act are concerned, the Hon'ble Apex Court in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra 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 Hon’ble 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.

22. 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 only attributes the role to the present applicant that he was present. There is no material to show that either he had committed the offence as a member of organized crime

syndicate. The crime chart shows that except this offence, no other offence is registered against the applicant in his individual capacity. The investigation papers nowhere show that he has committed any offence to gain economic gain and pecuniary benefits or other advantages for himself or any other reasons.

23. 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 committed by the co-accused are also not demonstrated on the basis of some evidence on record.

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

ORDER

(i) The criminal application is allowed.

(ii) Applicant - **Vishal s/o Raju Chavan**, in connection with Crime No.57/2021 registered with Umarkhed Police Station, District Yavatmal, for the offences punishable under Sections 307, 397, 395, 353, 332 of the Indian Penal Code along with Sections 3(1)(iii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, be 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.

(iii) The applicant shall attend on 1st of every month the concerned Police Station, till conclusion of the trial.

(iv) The applicant shall not leave the jurisdiction of the District Court, Yavatmal without prior permission of the said Court.

(v) The applicant shall not indulge in the similar type of activities

(vi) Contravention of any of conditions above leads to cancellation of the bail.

(URMILA JOSHI-PHALKE, J.)

Sarkate